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CONTENTS

DEPARTMENTS

The contents of the NATIONAL MUNICIPAL REVIEW are indexed in the *International Index to Periodicals*, in *Public Affairs Information Service* and by the *Engineering Index Service*

THE LEAGUE'S BUSINESS

Committee on Nominations.—Richard S. Childs, president, has appointed the following as the committee to nominate officers for the coming year: Louis Brownlow, Public Administration Clearing House, *chairman;* H. S. Buttenheim, editor of the *American City;* C. A. Dykstra, city manager, Cincinnati, Ohio; Mayo Fesler, the Citizens' League, Cleveland; and C. E. Merriam, the University of Chicago.

This committee will nominate candidates for the office of president, first and second vice-presidents, five or more honorary vice-presidents, ten members of the council for three-year terms ending in 1934, and one member of the council for a two-year term ending in 1933 to fill a vacancy existing by reason of resignation. The report of the nominating committee will be published on this page in a later issue and will be submitted to the membership at the annual meeting to be held in Buffalo, New York, on November 9, 10 and 11.

*

Program for Thirty-seventh Annual Meeting.—The program for the National Conference on Government, which will be the thirty-seventh annual meeting of the National Municipal League, is now in tentative form. It provides for separate meetings for each of the organizations sponsoring the Conference which, in addition to the League, are the National Association of Civic Secretaries, the Governmental Research Association, the American Legislators' Association and the Proportional Representation League. Among the subjects to be discussed are the following: What's Wrong with Our Courts and Police, The Non-Partisan Ballot, Reducing Governmental Costs, Government in Depression, Delinquent Tax Administration, The Urban-Rural Conflict in Government, Progress in Measurement of Government Services, County Government, and the Shame of the Cities—and What Came of It.

Harry H. Freeman, director of the Buffalo Municipal Research Bureau, is organizing a committee on local arrangements and is preparing an attractive program of entertainment, including a sightseeing trip to Niagara Falls and a dinner in Niagara Falls, Canada, on the afternoon and evening of November 10. The detailed tentative program will be distributed to our membership direct by mail in October.

*

New Campaign Booklet.—We have just published a new campaign booklet entitled *Answers to Your Questions About the City Manager Plan.* It gives brief answers to twenty-four questions which are most commonly asked by voters during a campaign. The Secretary's office will gladly send a copy of this new booklet to any member who writes for it.

*

History of National Municipal League Now in Preparation.—Frank M. Stewart, professor of government at the University of Texas, is now engaged in the preparation of a history of the National Municipal League. This study, when completed, will be a companion volume to Professor Stewart's book on the *National Civil Service Reform League* which has won wide respect for its completeness and scholarship. Professor Stewart is undertaking this large and difficult task for us as a labor of love because of his interest in research and his faith in the worthwhileness of the project. He is making a thorough study of every phase of the work in the Secretary's office, is talking with officers and leading members about the past and the future of the League, and is making a study of the records and files of Clinton Rogers Woodruff, secretary of the League from its organization in 1894 to 1920.

Any member having material bearing on the early work of the National Municipal League is asked to send it to the Secretary's office for use in the preparation of the history.

RUSSELL FORBES, *Secretary.*

STANDARDS
of
PLAY AND RECREATION ADMINISTRATION

REPORT

of the

COMMITTEE ON PLAY AND RECREATION ADMINISTRATION

of the

NATIONAL MUNICIPAL LEAGUE

Prepared by

Professor Jay B. Nash

New York University, *Chairman*

Supplement to the
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FOREWORD

Our public play and recreation systems have had a Topsy-like growth. The public schools have established supervised playgrounds for the school population; they have extended the usefulness of the school plant by making it available as a community center; and they have in some cities stretched the school budget to its elastic limit to provide recreational facilities for the adult members of the school community. Concurrently but independently, the municipal government has been compelled to provide, at public expense, recreational facilities in the parks and supervised playgrounds during the summer months when the schools are closed.

The results of this situation are what could logically be expected. No one governmental unit has been responsible for the public recreation program; the "buck" has been passed from the schools to the city and back again; the two separate governmental units have been competitors instead of co-workers in administering the recreation function; the duplication and overlapping have increased the cost of public recreation while lessening its effectiveness.

This committee report suggests a clear-cut and definite division of responsibility between the schools and the municipal government. It advocates a broadening of the school program to provide recreation on a year-round basis for the youth of school age. It recommends that the municipal government should be wholly responsible for providing recreation for the adult group of post-school age. It points out the possibilities of a joint control over all recreation by having one executive in charge of the facilities of both the schools and the city government, and cites several examples where such coöperation has been successful.

This report is sponsored by the National Municipal League's Committee on Play and Recreation Administration, with the following personnel:

Jay B. Nash, Professor of Physical Education, School of Education, New York University, *chairman*

Le Roy E. Bowman, Secretary, National Community Center Association, New York City

Louis Brownlow, Director, Public Administration Clearing House, Chicago

Harold S. Buttenheim, Editor, *The American City*, New York City

W. P. Capes, New York State Conference of Mayors and Other City Officials, Albany, N. Y.

Lee F. Hanmer, Director, Department of Recreation, Russell Sage Foundation, New York City

Randolph O. Huus, Professor of Political Science, Friends University, Wichita, Kansas

The committee is deeply indebted to its chairman, Dr. Jay B. Nash, professor of education in New York University, who prepared the manuscript for this report. All members of the committee have contributed to the report by attending meetings and by offering constructive criticisms at each stage in its preparation. Harold S. Buttenheim, in addition to reading and revising each draft of the manuscript, enlisted the services of Joseph McGoldrick of Columbia University in an editorial capacity.

The committee does not offer its report as the final word on the subject; on the contrary, it fully appreciates that its conclusions are subject to all the weaknesses of a pioneer effort. The report is offered as a suggestive way out of the fog which now enshrouds the play and recreation function in many of our municipal governments.

Russell Forbes, *Editor.*

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STANDARDS OF PLAY AND RECREATION ADMINISTRATION

THE purpose of this pamphlet is to set forth the principles which should govern the organization and administration of those municipal activities which have been variously termed as "playground," "recreation," "park," and "physical education activities."

These terms are not used as synonyms. However, they have certain relationships. Playground activities have been referred to as the game and athletic phase of physical education. Recreation has been defined as the various types of leisure-time activities for children and adults. In this report, however, play activities will be used to cover all the types of activities which children enter into and which carry their own drive. These include musical, rhythmical, dramatic and handicraft activities as well as games and athletics. Recreational activities will refer to the same type of activities, but as applied to adults. Physical education will refer to the big-muscle phase of play activities, although in a well-rounded school program the big-muscle play activities are intermingled with all the other phases referred to above.

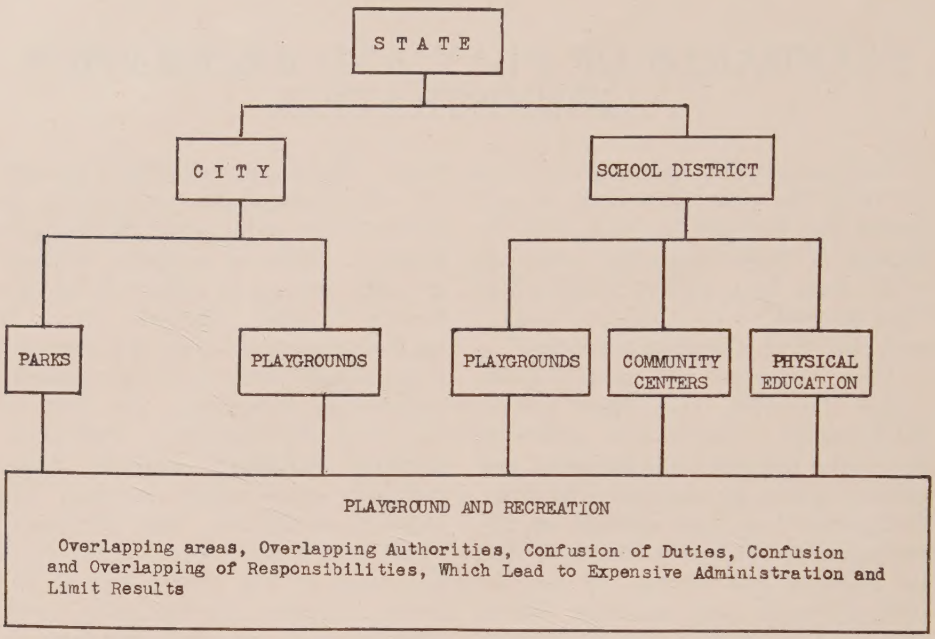
DIVISION OF RESPONSIBILITY AND ITS RESULTS

The administration of parks, playgrounds, recreation centers and school playground areas has developed in various ways in American municipalities. A well-known authority has aptly summed up the situation: "Where there are many local authorities, there is bound to be some unnecessary duplication of work, as well as neglect of some functions. Thus in one city there are two sets of playgrounds, one provided by the school board and another by the park board, yet there is *no system* of playgrounds, because of failure of the two boards to work together. There is another case where there are two sets of municipal baths, with two separate supervising authorities, yet there is no system of public baths. Such overlappings frequently lead to bitter political controversies between the separate authorities, and frequently result in lawsuits between them, all in the name of the public and at the public expense. On the other hand, new functions sometimes fall between two stools, since no one of the existing authorities cares to spend money on it."[1]

This lack of a uniform system is largely due to the wide variety of conditions under which the administration of play and recreation has developed. Governmental responsibilities have increased tremendously with the growth of cities. One of these responsibilities is that of providing parks and playgrounds and adequate physical education opportunities in connection with the schools. Various special governmental agencies have arisen and extended their plane of activity, so that today we have several governmental agencies attempting to carry on the same function in the same area. The following chart illustrates the existing possibilities for confusion and overlapping of responsibilities.

[1] William Anderson, *American City Government*, pp. 82, 83.

Chart I



The above chart indicates how both the city and school authorities are organizing play and recreational activities in many municipalities. Because of this situation there is a definite lack of coördination in many cities which leads to great confusion in the minds of the public in respect both to administration and to initiation. Within each of the various sub-divisions listed above a considerable amount of confusion could also be cited.

EXPANSION OF GOVERNMENTAL FUNCTIONS

School Activities Have Expanded. The public school formerly confined itself to what it now terms the "tool" subjects. Today, however, various departments of the school have projected their activities into the play and recreation field. This has been emphasized with the spread of universal education and the extension of the school age. Physical education, particularly since the World War, has become practically universal in the public schools of America. Thirty-six states, which include over ninety per cent of our population, have compulsory physical education laws. This has required a large amount of indoor and outdoor facilities for the new type of "play program" which has become generally accepted. Outdoor play yards varying from five acres to fifteen acres are being demanded, and indoor physical education facilities representing from 11 per cent to 31 per cent of the entire cost of the school plant are being provided.[1] There has been a tendency, since 1890, for playgrounds to be organized in connection with the public schools. These have not always been allied with the physical education movement, but within

[1] This information was secured in connection with a recent survey of fifteen large cities in this country made by Jay B. Nash, New York University.

the past decade year-round school playgrounds have been largely administered as a phase of physical education.

The Community Center Movement. There has been a growing tendency, since about 1850, toward the wider use of the school plant as a community center. The past decade has witnessed a great amount of progress both from the legal standpoint and from the practical standpoint.[1]

School departments other than physical education have also expanded their activities. English departments have organized dramatic activities which have utilized the out-of-school hours of the child. The music department has organized its orchestras, bands and glee clubs. The science department, with its emphasis on nature study, and the department of homemaking with its interest in home activities, as well as other departments, have pushed their way beyond the old-established school walls. On non-school days the school playground, administered largely by the department of physical education, has extended the range of activities beyond the big-muscle type of play to musical, manual, dramatic and science types of play.

Expansion of Park Functions. The expansion of the public parks in America can likewise be dated from about 1850. This has been shown in the development of national park areas, state and county parks and city parks, and playgrounds. Every state in the union has legislation relating to some phase of the park movement. Many parks have outgrown the "keep off the grass" stage and have become "playgrounds of the people."[2]

Municipal Playgrounds Have Expanded. The playground movement is much younger but has had a remarkable growth. In 1930, 980 cities conducted some type of playground activities. These playgrounds are organized under different departments of the city government; some are managed by the park commission, others are run by the public works department, still others by the shade-tree commission, while some are under the school board or a separate playground and recreation commission. Many cities

[1] Eleanor T. Glueck, *Community Use of Schools.* Williams and Wilkins Company, Baltimore, 1927.

[2] *Parks—A Manual of Municipal and County Parks*, edited by L. H. Weir. A. S. Barnes & Company, New York, 1928.

TABLE I

NUMBER OF CITIES OPERATING MUNICIPAL PLAYGROUNDS WITH TWO OR MORE GOVERNMENTAL OR PRIVATE AGENCIES COÖPERATING [a]

Year [b]	*1909*	*1910*	*1911*	*1912*	*1913*	*1915*	*1916*	*1917*	*1918* [c d]	*1923*	*1924*	*1925*	*1926*	*1927*
Number with coöperating plans.....	No report			27	32	55	49	115	118	197	250	272	313	338
Total number reporting ...	150	184	257	285	342	432	371	481	403	688	711	748	790	815
Percentage with coöperative plan...	..	..	..	9%+	9%+	12%+	13%+	23%+	29%+	28%+	35%+	36%+	39%+	41%+

[a] While the figures in this table are approximately correct, it was impossible to determine the amount of coöperation which has taken place.

[b] Taken from Year Books of the National Recreation Association.

[c] No reports for the years 1919 through 1922.

[d] Jay B. Nash, *Organization and Administration of Playgrounds and Recreation.* A. S. Barnes & Company, New York, 1928.

have two or more departments coöperating in a joint plan. The growing tendency to have playgrounds with two or more governmental agencies coöperating is indicated in the table on page 487.

The Legal Difficulties. This situation has been replete with legal and administrative difficulties. The city derives all its power from the state. In most of our states, city charters are acts of the legislature, and are amended, virtually at will, by the legislature. In fifteen of our states, however, cities have the constitutional power of home rule which permits them to draw their own charters and be somewhat less subject to legislative interference. Twenty-two of our states have passed recreational enabling acts giving their cities broad power and discretion. The majority of school boards are quasi-independent units but are also *the creatures of the state government.*[1] Under an old and thoroughly settled rule of law, a delegated power may not be redelegated.[2] Thus, though either a city or a school board may entrust its properties to mere agents, *they may not delegate their powers* over such property, for example, to each other.[3]

ADMINISTRATIVE PRINCIPLES

1. Two governmental agencies should not attempt to organize the same activities for the same people.[4] This is good law and good sense. Anything else would involve confusion and irresponsibility.

An illustration of the violation of this rule is found where both the municipal park and playground departments and the school district organize playground activities for children. In many instances these areas are adjacent and hence there is a definite overlapping in connection with the use of space and in connection with the service rendered to children. An example of this is found in Los Angeles, where some municipal playgrounds and school playgrounds are located side by side and are quite definitely competitive.

2. If the playground and recreation needs of children and adults are to be administered efficiently, there should be coördination of all local governmental and semi-private agencies concerned. This is equally obvious. There are many examples of successful coöperation of this sort.[5]

3. Additional open areas—parks, playgrounds, school yards, plazas, etc.—should be provided in accordance with a master city plan.

4. The legislative body of the municipality should have power to centralize in one administrative department all recreation activities of a similar type which are under municipal control. The school should have assigned to it specific functions that will not overlap those of any other local governmental agency.[6]

5. With the rising cost of local government, emphasis must be directed,

[1] *Gunnison* v. *The Board of Education of the City of New York*, 176 New York 13; and *Ridenour* v. *The Board of Education of the City of Brooklyn*, 15 New York Misc., 418.

[2] *Clark* v. *Washington*, 12 Wheat. 40, 6 L. ed. 544.

[3] Detroit is a very good example of a city where the board of education entrusts school property to the municipal recreation department, as mere agents, on certain afternoons and in vacation periods.

[4] Dillon, *Treatise on the Law of Municipal Corporations*, 5th ed., Vol. I, p. 616. Richard S. Childs, "A Democracy that Might Work," *The Century Quarterly, Winter of 1930*, pp. 6 and 7.

[5] Examples of such cities are Baltimore; Detroit; Oakland, Long Beach, and San Diego, California; Montclair, New Jersey; and Milwaukee.

[6] Such administrative set-up is found in Oakland, Berkeley, San Diego, and Long Beach, California.

first towards securing additional returns and service from a better integration of present agencies and a more efficient use of present facilities,[1] and later to an extension of facilities to meet growing needs.

6. The state should give the legislative bodies of municipal corporations and school districts greater discretion to expend money from general or special funds for play and recreation activities.[2]

7. The state legislature should authorize coöperative undertakings between various departments of a municipal corporation, two or more municipal corporations, or if possible a municipal corporation and a board of education.[3]

8. There should, perhaps, be some system of local popular initiative, so that the people of a community in certain circumstances can bring effective pressure to bear upon governing bodies which for one reason or another have been unresponsive to the public demands for the institution of particular types of playground and recreation service.[4]

9. In both municipal service and school service all playground and recreation leaders should be required to meet certain standards of education and training.[5]

SUGGESTED DIVISION OF RESPONSIBILITY

While this division of responsibility may not be universally applicable now, it would solve many of the present problems.

Pre-School Group. In the pre-school group, activities must center around the home as much as possible. This means the parents become the child's play leaders, or, where this is impossible, parents individually or by groups delegate the responsibility to trained leaders.

School Group. The dominant principle in the school group is trained leadership. We are already committed to this type of leadership in the public schools because of compulsory education. In this group, adult leaders, conscious of the child's needs, work out a program, classify the children, provide facilities, arrange for time in which to participate, and furnish leaders. It is assumed that play spaces and proper playground activities are the rightful heritage of every child.

Post-School Group. In the post-school group, an entirely different principle prevails. Individual leadership is no longer imperative. Participation is voluntary. In this situation the leader becomes an *organizer* rather than a teacher, and confines his efforts largely to self-organized groups. It is a much less expensive problem than handling the school-age group; the leader is dealing to a large extent with wage-earning adults and these activities should be largely self-sustaining and hence not a great burden to tax-levying bodies. Money raised from taxation for work in this group should be expended primarily for physical facilities and equipment and for the organizational facilities that are required to enable the self-organized groups to function freely.

Suggested Division of Administrative Authority. Below is shown a suggested

[1] Jay B. Nash, *Organization and Administration of Playgrounds and Recreation, op. cit.*

[2] Examples of states with liberal statutes are Wisconsin, New Jersey, New York, Massachusetts, Iowa and California.

[3] Examples of states with liberal statutes are Florida, New Hampshire, West Virginia, Georgia, Indiana, Kentucky.

[4] Examples of states with liberal statutes are Florida, Iowa, Massachusetts, New York, Ohio, Utah, Wisconsin and Vermont.

[5] California by requiring certification sets specific playground leadership standards for school playground directors.

division of authority based on age of participants.[1]

Age of Participants	
	POST-SCHOOL GROUP
up, 24, 23, 22, 21, 20, 19	Organized by city park, playground, or combination of park and playground, or comparable department. Permits from school for use of school facilities when not otherwise in use. (Use municipal parks, municipal playgrounds, county, state and national parks and land to be leased or loaned.)
	SCHOOL GROUP
18, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7	Organized by the school on year-round basis. Under direction of certified instructors and supervisors. Permit from city when using land and equipment under its control. (Use school yards, gymnasiums, swimming pools, etc.)
	PRE-SCHOOL GROUP
6, 5, 4, 3, 2, 1	Organized in the neighborhood with parent coöperation. Assisted by civic organizations, playground and recreation commission, and board of education or any comparable department. (Use vacant lots, back yards, roof gardens, garden courts, play streets, etc.)

This division of responsibilities is suggested because the school district is in many cities a corporation and thus is a definite sub-division of the state and is quite distinct from the municipal corporation. There seems to be no possibility of the school completely delegating the use of its property, when not actually in use for public school purposes, to the city. Again there seems to be no possibility of the city completely turning over its playgrounds to the school. With this situation existing in many cities, there seems to be no solution except a division of responsibility.

The chart on page 491 shows the governmental set-up which would bring about the suggested division of authority between the city and the schools.

In some such plan as the above, the overlapping of responsibility could be avoided. Here the city under a distinct department could conduct recreational activities for adults and for family groups in such activities as camping, picnicking, etc. The school district under some department could organize play activities on the school grounds not only of the physical education type but of the musical, manual and nature study type. Family recreations might be organized by the school on its own property. With the inter-use of facilities by permission, responsibility would be even more definitely allocated.

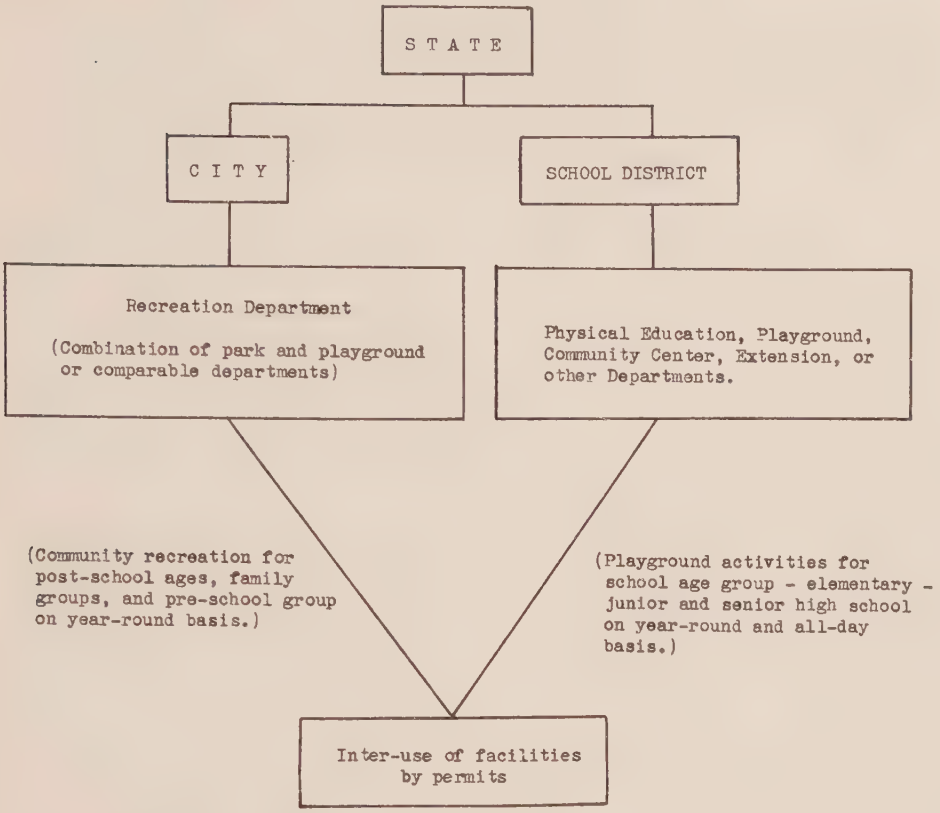
The home must be helped by various governmental agencies to provide play for the pre-school group. Portions of school yards and of municipal playgrounds or parks may be utilized if they are easily accessible to the small child.

It is quite apparent that many school systems are not ready to assume responsibility for the play activities of the school-age child during the non-school periods. It is also apparent that certain school systems are heavily burdened with expenses which may for the time being make impossible the maintenance of an all-year-round play and recreation system. However, it is to be noted that the trend of the past decade has been for schools to assume this responsibility.[2] The attitude of

[1] This is not meant to limit or discourage the school from including in its official program recreational activities for adult or family groups. See suggested school code in appendix.

[2] Notable examples of places where the school is actually assuming such responsibility in various forms are Philadelphia, Chicago, Los Angeles,

Chart II



the children in connection with playing on these school areas is noted on page 493.

Plan Would Solve Legal and Administrative Conflicts. One of the merits of the plan shown in Chart II is that much, if not all, of the legal confusion can be avoided. Responsibility can be centered in definite governmental agencies. This plan will also solve, to a large extent, many of the conflicts in administration which have centered around the following five major issues:

1. *Time.* Where two governmental agencies, such as the school and the municipal playground, are attempting to serve the school-age child, there arises a definite conflict relative to *time.* Both are competing for the child at the same hour; hence, there is a duplication of administrative machinery. This conflict is becoming more apparent as liberal school laws allow for the school facilities to be opened in the evenings and during the vacation period.

2. *Place.* Another definite conflict arises in connection with the *place* in which to conduct these activities. Forward-looking school authorities in this country are planning what they term adequate playground areas. If the

Columbus, Wichita, Tulsa, Oakland, San Diego, Long Beach, Santa Monica, Montclair, Utica, Bronxville, Albany, and Cleveland to a considerable degree, and many of the counties in Maryland, Virginia, Pennsylvania, California, and other states.

municipality, on the other hand, duplicates this space, it will be an expensive process. Inasmuch as the schools usually are geographically located in accordance with population and needs, the school playground, where its area is sufficient, seems to be the logical play area for the school-age child.

3. *Organization of Activities.* The school, through its carry-over activities in the department of physical education, music, art, dramatics and handicraft, has very definitely come into contact with the whole recreational movement. The school can no longer resist the demand of the public for an extensive use of this plant. Duplication of administrative machinery, when other governmental groups not as well equipped to do the job, conduct these activities, is an expensive process.

4. *Organization of Participants.* All participants in activities must be classified in accordance with age and capacity needs, by the schools and any other governmental agencies. If two governmental agencies are to classify participants of the same age, then there will be conflict. If the school is allowed to classify the activities of the school-age group and the municipal agencies those of the adult group, some conflicts would be avoided.

5. *Leadership.* One of the most pertinent conflicts is in connection with leadership. If two governmental arms —the school and the municipality— are to deal with the school-age child, two sets of leaders must be employed on school days, one serving up until 3:15, and another serving from 3:15 until closing time. This provides two sets of part-time leaders. Especially for the municipality, it is impossible to get qualified workers to serve so few hours a day, as the pay must naturally be small for such length of service. As a result, no adequate training for the municipal playground leader can be expected because of the short period of service and the low salaries. The total result has been that most of our municipal playground leaders have continued for only a very limited time. The turn-over in many cities has been three or four a year on a particular playground.

Civil service has not been successfully used up to the present time in selecting capable leaders for very small children. Only eight per cent of the established playground and recreation systems in American municipalities are under civil service. Even in many of these cities the merit system is not very effective.[1] Recently, in a city with thirty-one wards, ninety-three playground positions were open. The executive officer of the city called together the thirty-one ward politicians and said, "There are ninety-three playground positions open in this city. That means three apiece for you." In many cities playground executives are wholly at the beck and call of ward politicians.

MANY MUNICIPAL PLAYGROUNDS HAVE HAD LIMITED USE

The municipal playground operated as an arm of the city, distinct from the school playground, has rendered a fine pioneer service. It has demonstrated beyond question the value of playgrounds. Because of the fact that these municipal open spaces were not always geographically located to meet the needs of the children, the municipal playground has not been able to extend its services to a large percentage of children even in the best organized cities. This is evident from observation of the number of children on the playground and the number on the streets. There are other reasons for this poor attendance, among which

[1] Taken from 1925 and 1927 Yearbook of the National Recreation Association.

are incompetent leadership and unattractive grounds.

1. A survey of the cities reporting playground attendance in the 1928 Yearbook of the Recreation Association of America for cities of under 30,000 population indicates that the average daily attendance of the children on the playground was 1.3 per cent of the children of school age.[1]

2. A survey of the cities reporting playground attendance in the 1928[2] Yearbook of the Recreation Association of America for cities of over 30,000 population indicates that the average daily attendance of the children on the playground was 6.1 per cent of the children of school age.[2]

3. The total attendance on municipal playgrounds in seven large cities with well-organized playground departments shows that the percentage of children reached daily was 4.2 per cent of the school population within a radius of one-quarter mile.[3]

4. By actual count on three New York City playgrounds it was found that the attendance at the busiest hour was 2.5 per cent of the school children within a radius of one-quarter mile.[4]

5. In another count in New York City, it was found that the attendance at certain municipal playgrounds was .8 per cent of the school children within a quarter-mile radius.[4]

6. By exact count it was found that the daily average attendance of three large playgrounds in a congested area was 5.5 per cent of the school children within a quarter-mile radius.[5]

It is apparent from the foregoing that the independent municipal playground is not under its present management adequately serving, from the standpoint of number, children of school age. There are many reasons for this. One is that as a rule municipal playgrounds are not geographically located to attract the children. A second is that many of the grounds are opened only in the summer months. The most important reason is that in many instances there is inadequate leadership.

SCHOOL PLAYGROUNDS MAY HAVE WIDER USE

Where schools work upon a definite plan, it has been found possible to secure a high percentage of play participation, not only within the school day but after the closing hour for the schools.[6] This is possible because school grounds are located where the need is greatest. The children are there on the ground and it is possible to organize them very efficiently. In many of the schools, schedules are arranged in connection with the regular school program, and the after-school participation becomes a very natural part of the total school day. This program naturally flows over into the playground activities of the summer months.

Where Do Children Want to Play? The claim has often been made that

[1] This survey was made by taking the average playground attendance in the cities under 30,000, reporting in the 1928 Yearbook, and comparing this average daily attendance with the average daily attendance in the schools.

[2] This survey was made by taking the average playground attendance in the cities over 30,000, reporting in the 1928 Yearbook, and comparing this average daily attendance with the average daily attendance in the schools.

[3] This survey was made by Jay B. Nash with the assistance of playground officials in seven cities. A detailed study was made of the average daily attendance and this was compared with the average daily attendance of the schools. In order to check the number, actual counts were made.

[4] A study made in New York City by the Russell Sage Foundation.

[5] This study was made by Jay B. Nash in connection with three large playgrounds in Oakland, California. The average daily attendance was compared with the school children within the quarter-mile radius.

[6] This plan has worked out very satisfactorily in Los Angeles, California; Tulsa, Oklahoma; Gary, Indiana; Bronxville, New York; Montclair, New Jersey; Columbus, Ohio, and many other places.

children do not want to play on school grounds because they have been there all day, and have seen enough of their teachers. To determine the facts on this point, some 14,000 children were interviewed relative to their preference.[1] This survey demonstrated that children like to play where they have regular league games and where there are other children to play with. Approximately 40 per cent indicated very positively that they liked to play where they have the most games, and only 4 per cent indicated that they did not like to play at school because they had been there during the day.

Somewhat similar questions were asked of approximately 1,500 mothers through the aid of parent-teacher associations in various parts of the country. The mothers indicated that they would like to have their children play where there was good supervision and at places where they knew with whom their children were playing. Not a single mother out of the 1,500 indicated any objection to having their children play on the school grounds because of school discipline.[2]

The general thesis that the playground activities of the school-age child should be administered by the school is indicated by a survey of 67 cities over 100,000 population conducted by some of the officials of St. Paul.[3]

The *Michigan Municipal Review* for June, 1930 indicates progress in connection with unification of recreation work in Lansing, Michigan. The bulletin of the Portland (Oregon) City Club for July 11, 1930, also urges centralization of authority over a greater use of school and city facilities.

Leading city planners likewise believe that schools should be made responsible for the play of the school-age child. This proposal has been endorsed by Harland Bartholomew, St. Louis; the late George B. Ford, director of the Regional Planning Association of New York; John Nolen, of Cambridge, Massachusetts; Charles H. Cheney, of Los Angeles; and Professor Henry V. Hubbard, of Harvard University,—all outstanding authorities.

Said Mr. Bartholomew: I agree most wholeheartedly that responsibility for recreation of the child of grade-school age should center around the school authorities. The child's life centers around the public school throughout the greater part of the day for nine months of the year. It is both wasteful and futile to attempt to set up a separate independent physical plant (such, for instance, as municipal playgrounds) for the nine months' school period or for the short summer session.

Mr. Nolen says on the same point: We feel that the use of school playgrounds at all times, especially in vacation periods, is an economic measure, and that it tends to give the school a new significance as a community center for the neighborhood.

Mr. Cheney thinks that the only logical place for the child of school age to play is the school playground. Play areas are essential here for school purposes. It is a criminal waste not to have these open after daylight all of the year. Providing other play areas is useless duplication, not only of areas, but of administrative overhead. If the school cannot because of finances immediately assume this responsibility, the joint plan to eliminate duplication of areas and duplication of administrative overhead is the only solution.

L. H. Weir, the representative of the National Recreation Association, who conducted the elaborate park survey during the years 1926 and 1927, said in his report:

The distribution of primary schools, of com-

[1] The answers were gathered from New York City; Houston, Texas; Rochester, N. Y.; Los Angeles, Calif.; Oakland, Calif.; San Diego, Calif.; Albany, N. Y.; Salt Lake City, Utah; Montclair, N. J.; Glenview, Ill.; Pasadena, Calif.; Yonkers, N. Y.; and Chicago, Ill.

[2] Survey made by Jay B. Nash in the year 1929.

[3] See *Mind and Body*, March 24, 1930, pp. 129–130.

bined primary and intermediate schools, and, to a lesser degree, of the junior high schools, is based upon reasonable walking distance from the homes of the children. This applies to the rural district except in the case of the consolidated school, as well as in towns or cities. This principle of reasonable walking distance is exactly the principle fixed upon by the city planners and recreation planners for the distribution of children's playground areas.[1]

Elsewhere he says:

There appears to be no fundamental reason, however, why in the average community a school building cannot provide the necessary facilities for indoor activities and needs of the children on the school playground.[2]

The school can practically universalize play opportunities for children, as illustrated by the activities of the states of Maryland, California and Virginia, and the cities of Wichita, Kansas; Oakland, California; Columbus, Ohio; Niagara Falls, New York; Los Angeles, California; and Philadelphia, Pennsylvania.

Minneapolis is a striking example of park departments or municipal playground departments which have been able to reach a large percentage of the school-age group. It should be noted, however, Minneapolis has definitely planned to locate play areas within easy reach of all communities. Playground facilities for the school-age group in Milwaukee are provided by the extension division of the board of education.

SCHOOLS CANNOT PROVIDE A COMPLETE COMMUNITY RECREATION PROGRAM

While now properly equipped to reach the school-age group and contribute to the adult program also, there seems to be no likelihood that the schools will organize a real program of community recreation beyond the bounds of their property. By "community recreation" is meant that great range of activities for the adult and the family units, such as golf, tennis, bowling on the green, fly-casting, camping, horseback riding, community music, dramatics, etc. Such activities must be centered in large parks and reservations often in coöperation with national, state and county units, and necessitate the equipping of these large areas with stadia, museums, botanical gardens, zoological gardens, golf links, camps, swimming pools, bridle paths, picnic grounds, children's theatres, municipal auditoriums, etc.

The school is sufficiently burdened today with the task of organizing play activities for the school-age group. Its finances will not permit any major extension of activities except the use of the school plant for play purposes on non-school days.

THE MORE EXTENSIVE FACILITIES FOR COMMUNITY RECREATION SHOULD BE PROVIDED BY MUNICIPAL GOVERNMENT

In this situation the combined park and playground departments have an unlimited opportunity in the adult and family leisure-time field. Properly organized, this department could be of almost universal service to the community. Relieved of the intensive supervision of playground activities as organized by the school, special attention could be given to the service needs represented by the adult and family groups. Examples of this broad service are today found in the park departments in Chicago, the recreation department in Los Angeles, the Playground and Athletic League in Baltimore, the park department in Portland, and elsewhere.

In many cities it would be possible at the present time for the municipal government to assume the responsi-

[1] *Parks—A Manual of Municipal and County Parks*, edited by L. H. Weir. A. S. Barnes & Co., New York, 1928, Vol. 1, p. 18.

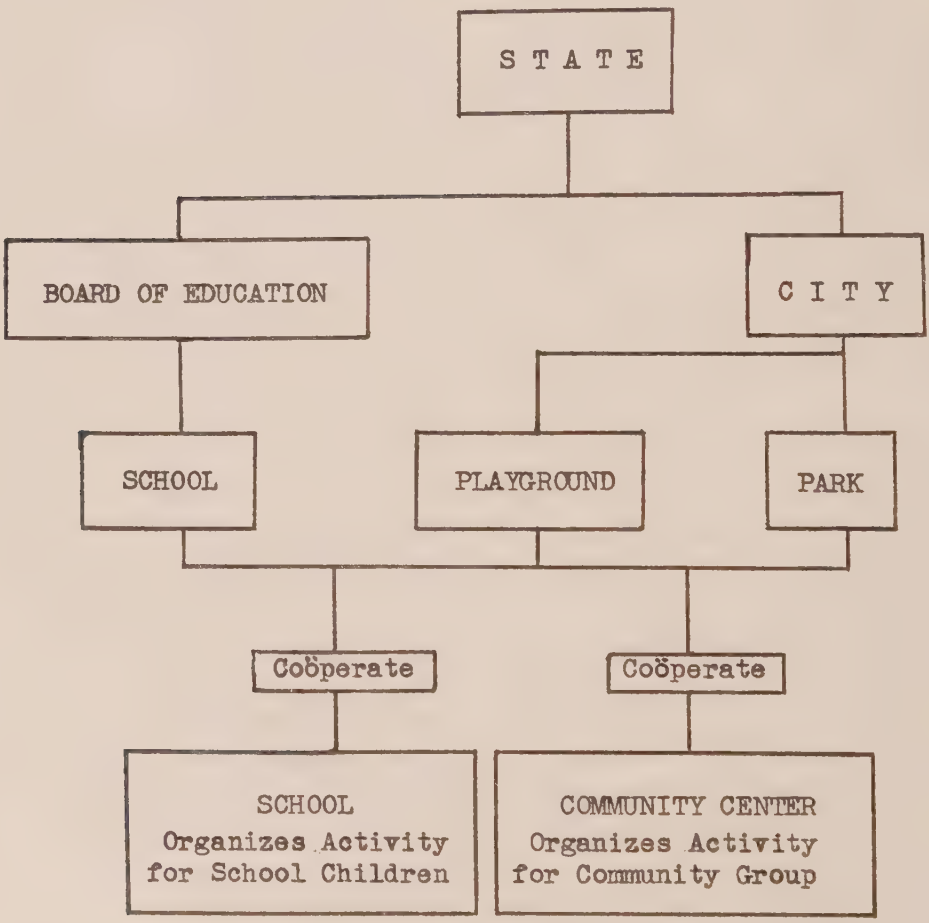
[2] *Ibid.*, p. 125.

bility for providing recreation for the adult group. Some recreational departments are well financed and are in the hands of exceptional leaders. In setting up a division of responsibility, the aim should be to eliminate overlapping, to cut down administrative conflict and to keep the administrative machinery as simple as possible. Many types of coöperation may be effected pending a final solution. Several types of coöperation are suggested below.

In a city where with a municipal playground department, a municipal park department and a school department, all organizing playground and recreational activities, coöperation might be secured in accordance with plan number 1. The school board and the municipal playground authorities might concentrate their activities in the hands of one executive, as is the practice in Oakland, California; Winston-Salem, Houston, Tampa, Detroit,

Chart III

Coöperative Plan No. 1

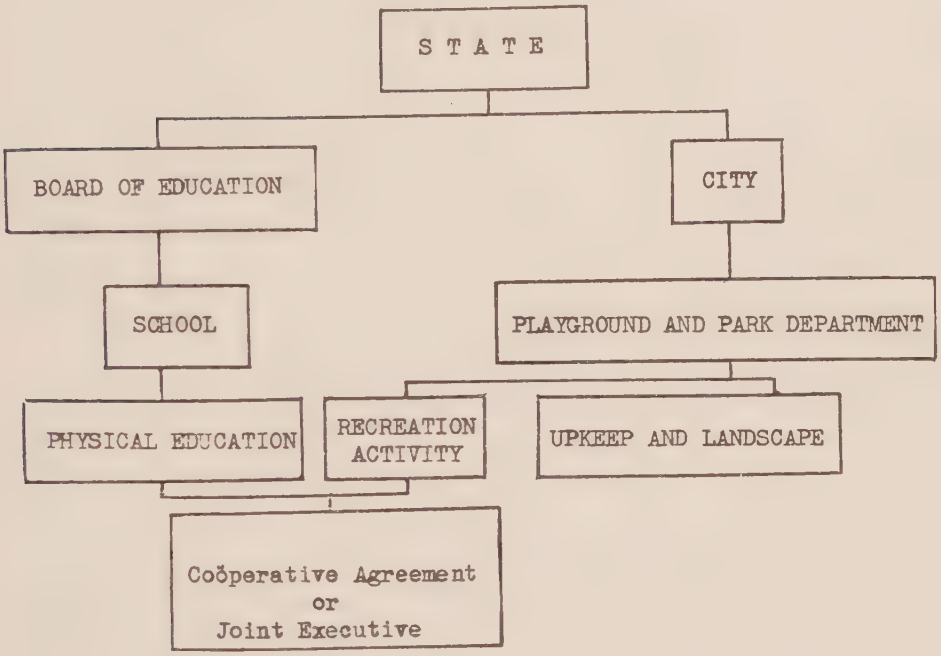


Salt Lake City, Pittsburgh, Oklahoma City, Cleveland Heights, and Erie, Pennsylvania.

Where all the municipal play and recreation functions are combined in one department, it would be possible to

Chart IV

Coöperative Plan No. 2



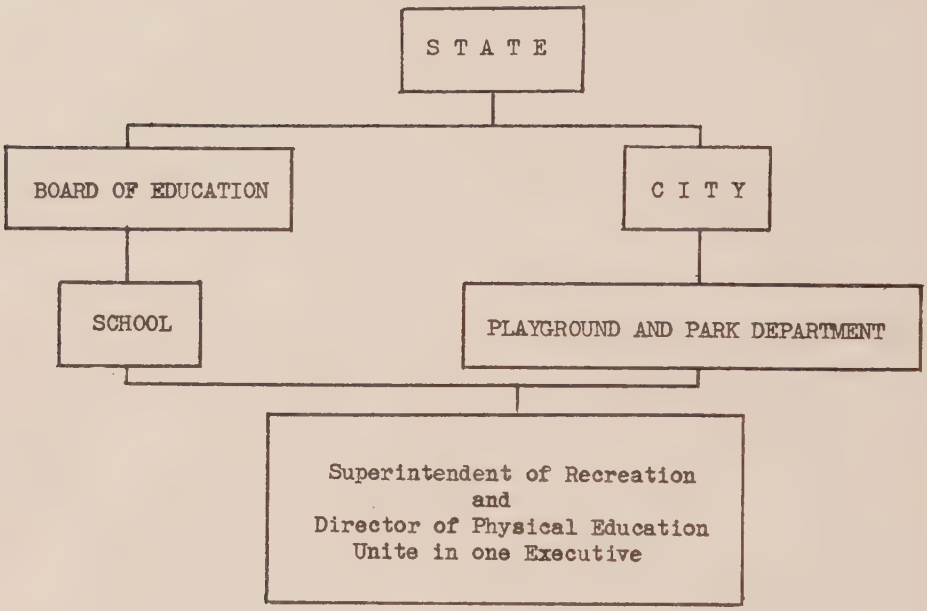
Where a combined municipal playground and park department exists, the solution is much simpler as illustrated by coöperative plan number 2. The recreation activity of the municipal department could be tied closely with the school by means of a joint executive or by means of a general coöperative agreement whereby the school took care of certain responsibilities and the municipality certain others. Examples of such plan are found in Dallas, Pasadena, Milwaukee, Denver, Grand Rapids, Battle Creek, Newark, Ithaca, Montclair, N. J.; El Paso, and Windsor and Kitchener, Canada.

unite all of the activities of this department with the carry-over activities of the school by means of a joint executive, as illustrated by coöperative plan number 3. This would be particularly applicable to cities ranging up to a population of 250,000. Examples of such plan are found in Long Beach, San Diego, Berkeley, and Santa Monica, California; and Tucson, Arizona.

One of the most urgent problems connected with the growth of cities is the provision of adequate spaces in which children's play activities can be conducted under skilled leadership. There are today indications that taxpaying groups in many of our cities are unwill-

Chart V

Coöperative Plan No. 3



ing to increase their expenditures for facilities, equipment and leadership in the field of public play and recreation until every effort is made to use to their utmost capacity the facilities now provided. Economy not only demands the utmost use of existing facilities but a clarification of essential responsibilities such as suggested in this report, thus preventing needless duplication of services and capital outlays resulting in needless waste of taxpayers' money.

The appendix which follows sets forth the recommended administrative and legal set-up necessary to carry out the principles advocated in this report.

The suggestions in the appendix are made not only to broaden the powers of individual governmental arms but to give additional power for coöperation to meet the special needs of local communities. It is recognized that there is no universal solution of the problem at the present time.

APPENDIX

ANALYSIS OF HOME RULE PROVISIONS, ENABLING ACTS, COMMUNITY CENTER ACTS, PHYSICAL EDUCATION LAWS, TOGETHER WITH OPINION OF STATE SUPERINTENDENTS OF SCHOOLS, ATTORNEYS-GENERAL OF STATES AND PROCEDURE IN VARIOUS STATES

State	Method of Providing Power to Conduct Playgrounds	Enabling Acts [2]					Opinions on Legality of Spending School Money for Playgrounds [3]		Special Certification	Home Rule Power		Community Center Acts [4 7]		Physical Education Provisions		Summary of Powers to Expend Public Money to Support Playgrounds [5]		
		Government Units Affected	*Authority Centered in*	*Joint Control*	*Subject to Popular Referendum Feature*	*School Representation on Governing Board*	*State Superintendent of Schools*	*Attorney-General*	*For Playground Teachers*	*Constitutional Home Rule*	*Home Rule Provisions*	*Activities*	*Finances*	*Is There a Law?*	*Is There a Director?*	*To Use City Funds*	*To Use School Funds on School Days*	*To Use School Funds on Non-school Days* [10]
Alabama	Special Legislation	Cities over 100,000 population	Park and Recreation Board	Yes	No	No	Illegal	Opinion refused	No	No	—	Civic, social, recreational	Self-supporting	Yes	Yes	Legal in only two cities	Questionable	Illegal
Arizona	Home rule [2]	—	—	—	—	—	Legal	—	—	Yes	Cities over 3500 pop.	None	—	Yes	No	Legal if in charter	Legal	Legal
Arkansas	Laws vague [1]	—	—	—	—	—	Illegal	Illegal	—	No	—	None	—	No	No	Illegal	Questionable	Illegal
California	Home rule [2]	—	—	—	—	—	Legal	—	Yes [6] 2 years special training	Yes	Cities over 3500 pop.	Recreation general	Tax except when fee is charged	Yes	Yes	Legal if in charter	Legal	Legal [8]
Colorado	Home rule [2]	—	—	—	—	—	Legal	—	No	Yes	Cities over 2000 pop.	None	—	No	No	Legal if in charter	Legal	Legal
Connecticut	Enabling act	Town, city, borough	No	No	No	No	Legal	—	—	No	—	Educational purposes	Self-supporting	Yes	Yes	Legal	Legal	Legal
Delaware	Laws vague [1]	—	—	—	—	—	Illegal	—	—	No	—	General meetings	Tax	Yes	Yes	Illegal	Illegal	Illegal
Florida	Enabling act	Cities, counties	School Bd. Park Bd. Playgr. Bd.	Yes	Yes	Yes	Legality questionable	Legal	—	No	—	None	—	Yes	Yes	Legal	Questionable	Illegal
Georgia	Enabling act	Cities, towns	School Bd. Park Bd. Playgr. Bd.	Yes	Yes	No	Legality questionable	Illegal	—	No	—	Recreation	Bd. of ed. regulation	Yes	Yes	Legal	Illegal	Illegal
Idaho	Laws vague [1]	—	—	—	—	—	Legality questionable	—	—	No	—	General	No provision	Yes	No	Illegal	Illegal	Illegal
Illinois	Enabling act	Cities, towns, villages	School Bd. Park Bd. Playgr. Bd.	Yes	Yes	Yes	—	Legal	—	No	—	General	Light, heat, janitor	Yes	No	Legal	Legal	Legal
Indiana	Enabling act	Cities	School Bd. Rec. Bd.	Yes	Yes	Yes	Legality questionable	Legality questionable	—	No	—	General	Light, heat, janitor	Yes	No	Legal	Legal	Legal
Iowa	Enabling act	Cities	Playground Commission	No	Yes	Yes	Legal	Illegal	—	No	—	General	Self-supporting	Yes	No	Legal	Questionable	Illegal
Kansas	Laws vague [1]	First and second class cities	—	—	—	—	Legal	—	—	No	—	General	No provision	No	No	Illegal	Legal	Legal
Kentucky	Enabling act	Cities, counties	Park Bd. School Bd. Playgr. Bd.	Yes	No	No	—	Illegal	No	No	—	General	Self-supporting	Yes	No	Legal	Illegal	Illegal
Louisiana	Enabling act	Cities, towns, villages	—	Yes	No	No	—	Legality questionable	—	No	—	None	—	—	—	Questionable	Questionable	Illegal
Maine	General in acquiring land	—	—	—	—	—	—	Legality questionable	—	No	—	None	—	Yes	Yes	Questionable	Illegal	Illegal
Maryland	Special legislation	—	—	—	—	—	Legality questionable	—	—	No	Baltimore only	Civic, social, recreational	Self-supporting	Yes	Yes	Legal for certain cities	Legal	Illegal
Massachusetts	Enabling act	Cities, towns	Park Bd. School Bd. Playgr. Bd.	Yes	No	No	Legal	—	—	No	—	General	Tax	Yes	Yes	Legal	Legal	Legal
Michigan	Home rule enabling act	Counties, cities, villages	Recreation Board	No	No	No	Legal	Legal	—	Yes	Any city or village	General	Self-supporting	Yes	Yes	Legal	Legal	Legal [9]
Minnesota	Home rule [2]	—	—	—	—	—	Legality questionable	Legality questionable	—	Yes	Any city or village	General	Tax	Yes	Yes	Legal if in charter	Illegal	Illegal
Mississippi	Laws vague [1]	—	—	—	—	—	Illegal	Opinion refused	—	No	—	Public gatherings	Bd. of ed. regulation	Yes	No	Illegal	Questionable	Illegal
Missouri	Home rule [2]	—	—	—	—	—	Legality questionable	—	—	Yes	St. Louis and Kansas City only	Civic, social, recreational	Tax	Yes	Yes	Legal if in charter	Questionable	Illegal
Montana	General	—	—	—	—	—	Legality questionable	—	—	No	—	None	—	—	No	Questionable	Questionable	Illegal
Nebraska	Home rule [2]	—	—	—	—	—	Legal	—	—	Yes	Cities over 5000 pop.	Public assemblies	Self-supporting	No	No	Legal if in charter	Legal	Questionable
Nevada	Very general [1]	—	—	—	—	—	Legality questionable	—	—	No	—	None	—	Yes	No	No work reported	Illegal	Illegal
New Hampshire	Enabling act	Cities, towns	Park Bd. School Bd. Playgr. Bd.	No	No	Yes	Legal	—	—	No	—	Writing, singing, school	Self-supporting	No	No	Legal	Legal	Legal
New Jersey	Home rule enabling act	Cities, towns, counties	Recreation Commission	No	Yes	Tax and fees	Legal	—	—	Yes	Very broad	Athletic, social, civic	Tax	Yes	Yes	Legal	Legal	Legal
New Mexico	Laws vague	—	—	—	—	—	Legality questionable	—	—	No	—	None	—	No	No	Illegal	Illegal	Illegal
New York	Enabling act home rule	Cities, second and third class, towns, villages, counties	School Bd. Park Bd. Recreation Board	Yes	Yes	Yes	Legal	—	—	Yes	Very broad	General	Encourages self-support	Yes	Yes	Legal	Legal	Legal
North Carolina	Enabling act	Cities, towns, sch. dist.	School Bd. Park Bd. Rec. Bd.	Yes	Yes	No	Legality questionable	Legality questionable	No	No	—	Civic meetings	Self-supporting	Yes	No	Legal	Questionable	Illegal
North Dakota	Laws vague	—	—	—	—	—	—	Legality questionable	No	No	—	Public meetings	No provisions	Yes	No	Illegal	Illegal	Illegal
Ohio	Home rule enabling act	Cities, counties, villages	Recreation Board	Yes	No	Yes	Legal	—	Yes	Yes	Any city or village	Civic, social, recreational	Self-supporting	Yes	Yes	Legal	Legal	Legal
Oklahoma	Home rule enabling act	Cities of first class schools	School Board	No	Yes	Yes	—	Legal	No	Yes	Cities over 2000 pop.	Recreation	Tax	No	No	Legal	Legal	Legal
Oregon	Home rule [2]	—	—	—	—	—	Legality questionable	Opinion refused	No	Yes	Any city or town	Recreation	Self-supporting	Yes	No	Legal if in charter	Questionable	Illegal
Pennsylvania	Enabling acts	Second and third class cities, counties, townships	Recreation Board	Yes	No	Yes	Legal	—	No	No	—	Social, recreational	Bd. of ed. regulations	Yes	Yes	Legal	Legal	Legal
Rhode Island	Enabling act	Cities, towns	School Bd. Park Bd. Rec. Bd.	Yes	No	Yes	Legal	—	No	No	—	None	—	Yes	No	Legal	Legal	Legal
South Carolina	Very general [1]	—	—	—	—	—	—	Legal	No	No	—	None	—	Yes	No	Illegal	Illegal	Illegal
South Dakota	Very general [1]	—	—	—	—	—	Legal	Legality questionable	No	No	—	Public gatherings	Bd. of ed. regulations	No	No	—	Illegal	Questionable
Tennessee	Laws vague [1]	—	—	—	—	—	Legality questionable	Illegal	—	No	—	None	—	Yes	No	—	Illegal	Illegal
Texas	Home rule [2]	—	—	—	—	—	Legality questionable	Opinion refused	No	Yes	Cities over 5000 pop.	None	—	Yes	Yes	Legal if in charter	Questionable	Illegal
Utah	Enabling act	First and second class cities, towns, schools, counties	Recreation Board	Yes	No	Yes	Legal	—	No	No	—	Recreation	Tax	Yes	No	Legal	Legal	Questionable
Vermont	Enabling act	Towns, villages, schools	School Bd. Rec. Bd.	Yes	Yes	No	Legal	—	No	No	—	None	—	No	No	Legal	Legal	Legal
Virginia	Enabling act	Cities, towns, counties	School Bd. Rec. Bd.	Yes	Yes	No	—	Legality questionable	No	No	—	Assemblies	Bd. of ed. regulations	Yes	Yes	Legal	Questionable	Illegal
Washington	Home rule [2]	—	—	—	—	—	Legal	—	No	Yes	Cities over 20,000 pop.	General	Tax	Yes	No	Legal if in charter	Legal	Questionable
West Virginia	Enabling act	Cities, towns, counties, schools	School Bd. Rec. Bd.	Yes	Yes	Yes	Legal	Illegal	No	No	—	Recreation general	Tax	Yes	No	Legal	Questionable	Illegal
Wisconsin	Home rule [2]	—	—	—	—	—	Legal	Opinion refused	No	Yes	Very broad	General	Tax	Yes	No	Legal if in charter	Legal	Legal
Wyoming	Laws vague	—	—	—	—	—	Legality questionable	—	No	No	—	None	—	No	No	Questionable	Questionable	Illegal

[1] Laws very general. As a rule they refer to parks but nothing definite as to playgrounds. Activities in this state are carried on largely by park departments, other branches of the city government, or by private organizations.

[2] Based on letters from state superintendents of schools and state attorneys-general.

[3] Cities have power providing they so frame their charters.

[4] Powers of interpreting what activities are legal left largely to boards of education. Recreational work constitutes bulk of activities.

[5] Based on wording of laws, opinions of school officials and attorneys-general and local practice, and opinion of the author, very few count decisions.

[6] Considered legal under the community center act with certified teachers.

[7] Laws and activities checked with survey made by Eleanor T. Gleuck. Gleuck, Eleanor T.—*The Community Use of Schools.*

[8] Checked with the work of Andrew G. Truxal. Truxal, Andrew G.—*Outdoor Recreation Legislation and its Effectiveness.*

[9] Authorized under special school law relative to the control of athletics.

[10] Based on use of regular school money raised by school tax or received from state; does not consider where community has raised special "playground fund" and turned it over to the school board to spend.

APPENDIX

LEGAL MACHINERY NECESSARY TO CARRY OUT THE PRINCIPLES ADVOCATED IN THIS REPORT

The procedure for putting into effect the principles discussed above may be provided in several ways. In states with constitutional home rule provisions which allow cities to frame their own charters, there is little difficulty. In other states legislative enabling acts may be passed to give cities of various classes blanket power. The enabling act may be so worded that it also becomes a part of the school code and this applies also to boards of education.[1]

HOME RULE

Extension of the home rule principle is a necessary step to efficient local government. In many of the states where home rule is granted to local governmental units, it should be extended to include more units and especially the smaller ones. This may well be done without loss of the valuable services which the state may render in the establishment of certain state-wide standards of health, education and utility regulation.

The accompanying digest of laws indicates that home rule has allowed municipalities greater latitude in operating playgrounds.

RECREATION ENABLING ACTS[2]

A broad recreation enabling act should give to the governing bodies of the various local governments of the state blanket power to expend money raised by taxation for the establishment of playgrounds and recreation centers without approval by local referendum.[3]

Suggested Provisions of Enabling Act. The enabling act should give

[1] To make sure, however, that local communities have the legal right to expend tax money for the conduct of playground and recreation activities, Professor C. W. Tooke, of New York University Law School, believes that a state should have constitutional home rule provisions and, in addition, an enabling act passed by the legislature. In a letter to the writer dated February 6, 1929, he says:

In all the constitutions giving to the electors of a city the power to frame and amend the charter, a reservation is made that it shall be consistent with the constitution and general laws of the state. Subject to this restriction, such constitutional home rule provisions vest in the local electors the legislative power of the state. The sphere of local home rule thus created necessarily cannot be fixed, but *will vary from time to time* as the policy of the state may change to meet new conditions. Generally, we say that the home rule provision gives the electorate the full legislative authority to create and amend charters, but subject to the existing general laws and those that may be later enacted. Thus, if there were no general enabling statute, the local electorate might confer powers upon the city to the same extent as the legislature could upon municipalities not under home rule charters. Certain powers for the time being may be held to be exclusively within the option of home rule, but the policy of the state may change and a given power cease to be purely municipal. This policy of the state is expressed in general statutes, which may enlarge the police power of the state. Many of the early general zoning ordinances were held to be unconstitutional by the state courts, but, after a general enabling statute was passed, were later upheld by the same courts.

[2] For full text of recreation enabling acts, see Jay B. Nash, *Organization and Administration of Playgrounds and Recreation, op. cit.*

[3] If each governmental unit is required to hold a special referendum to authorize the expenditure of tax money for playgrounds, progress will be slow because of the cumbersome process involved.

broad latitude to the local community to carry out the intention of the act in the most convenient manner. The exact wording of the act will of necessity have to conform to the basic law of the state. The provisions which follow are merely suggestive and should not be taken literally. Enabling acts should be clear on the following points:

1. *Governmental units affected.* The bill should be sufficiently broad to include cities of various classes, towns, townships, villages, counties, school districts, and other local governmental units of the state.[1]

2. *Acquisition of land and buildings.* Local governing bodies should have the power to set aside in perpetuity, or for a definite period of time, any land which may now or hereafter belong to the government. The governing body should also be authorized to receive donations of land, to lease land, or in any other legal way to gain control of land *within or without the city* in accordance with the law of the state.[2]

3. *Government structure.* Ample leeway should be allowed in the act so that control may be vested in the department of recreation, department of parks, department of parks and recreation, school department, or any other appropriate existing department, board or commission.[3]

Where a special commission is appointed, it should be advisory, and its members should serve without pay for possible terms of five years. It is preferable to stagger the terms of such board members.

4. *Power to expend tax money.*[4] Local governments should be authorized, on the initiative of the governing body, to provide for the financial support, establishment, and maintenance of the various types of playground and recreation centers, including the employment of directors, assistants and staff members, and the purchase of necessary equipment and supplies. The board of education should have power to appropriate money from any available state or local funds.

5. *Types of activities.* The governing body should have power to organize and conduct all phases of play and recreational activities, physical training, athletics, sports, games, league tournaments, or any other activities which in the judgment of the governing body shall promote the health, morals, education, welfare or culture of the inhabitants of the city.[5]

6. *Duties and powers.* The governing body should have power and authority to provide, establish, maintain, conduct, or supervise all of the activities enumerated above. It should be authorized to receive gifts, bequests of money, or any donation for temporary or permanent use.

7. *Joint control.* The enabling act should provide that any two or more cities, towns, counties or school districts may jointly establish and conduct a system of recreation and playgrounds and may exercise all the powers granted by the enabling act. The act should authorize joint action by any two arms of the municipal corporation or joint action by an arm of the municipal corporation and board of education.[6]

[1] See the enabling acts in Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, Utah, and West Virginia.

[2] On this point, see the enabling acts in Florida, Illinois, Massachusetts, Michigan, Ohio, and West Virginia.

[3] See the laws of Florida, Georgia, Louisiana, Massachusetts, New Hampshire, New York, and West Virginia.

[4] This should include the power to vote bonds for acquiring lands, buildings and other permanent property.

[5] For examples of broad provisions, see laws of Connecticut, Indiana, New Hampshire, New Jersey, Pennsylvania, Utah.

[6] Limited provisions for such joint action are

8. *Initiation of action by the people.* It should be possible for local communities to force governing boards to give effect to provisions of the enabling act. A petition signed by the requisite percentage of the qualified voters should be sufficient to require the governing body to submit the provision to referendum vote.[1]

SCHOOL CODES [2]

Scope of Authority of School Boards. Several problems arise in connection with the administration of playground and recreation activities by boards of education. These problems concern the scope of authority of the school board over expenditures for the following purposes:

1. *Authority to expend school money for playgrounds on legal school days.* The power to conduct playground activities on school grounds on legal school days seems to be generally accepted throughout the country. Although in some states there seems to be no legal justification for the practice, it has never been questioned.

2. *Authority to expend money raised by the municipality for playgrounds.* It is clear also that school boards are authorized to expend for playground and recreation money which has been raised by the municipal government and which has been turned over to the school board for such purpose. Such practice is authorized in Florida, Illinois, Indiana, Kentucky, Massachusetts, New York, North Carolina, Oklahoma, Rhode Island, Vermont, Virginia, West Virginia and some other states.

3. *Authority to expend school money for playgrounds on non-school days.* Does the school board have authority to expend school money, raised for the general support of education either from local or state sources, for playground and recreational activities on the school grounds and in school buildings on non-school days? Legal sanction for such expenditures is difficult to find. The commissioners of education in Vermont, Michigan, Ohio, Pennsylvania, Rhode Island, Connecticut, New Jersey, Arizona, Kansas, California, Minnesota, New York, Oklahoma, and Wisconsin feel that local boards have such power. These, it will be noted, are to a large extent states where broad home rule provisions exist, and, in many instances, where there are special enabling acts. The legality of using school money for the conduct of playground activities on non-school days is seriously doubted in many states. In an even greater number of states the school superintendents or the attorneys-general doubt the existence of any power to spend school money on non-school days.

Opinions of State Superintendents of Schools. The viewpoints of certain superintendents of schools are here noted:[1]

Alabama—The school laws of Alabama do not authorize the appropriation of public school funds to employ teachers and purchase athletic supplies for use on days when the school is not actually in session.

Delaware—School laws of Delaware make no provision therefor.

Florida—Our statutes do not appear to contemplate the use of tax money for the employ-

found in the laws of Florida, Illinois, Indiana, Massachusetts, New York, Ohio, Utah, West Virginia.

[1] Examples of such initiative provisions are found in the laws of Florida, Georgia, Illinois, Indiana, Iowa, New York, Virginia and West Virginia.

[2] In some states the board of education may find in the general statutes the authority to conduct certain playground and recreational activities.

[1] Quoted from letters to Jay B. Nash, 1929.

ment of teachers nor for the purchase of athletic supplies for the use of school playgrounds after the regular school session of school days.

Idaho—The law makes no provision whereby moneys may be used for hiring of teachers for the supervision of playgrounds for Saturdays and vacations.

Mississippi—The school laws of Mississippi do not permit the expenditure of public school funds for playground activities during summer vacation and on Saturdays.

Montana—As our school law now stands, I believe it is legal to purchase equipment for playground use for Saturdays and vacations, but I do not think we are authorized to spend money for an instructor during the summer vacation.

Nevada—I mean by this that equipment and playgrounds are available to the children of this state after school hours, quite often on Saturdays and during the short vacations in the school terms; however, I do not know of any school employing a regular athletic or playground supervisor during the summer months and I do not think that children have access to playground and equipment during the summer months.

New Hampshire—I think expenditure for playgrounds in the summer time is illegal.

North Carolina—So far as I know, there is no legal authority for the employment of teachers and supervisors on summer playgrounds.

Tennessee—Inasmuch as the Tennessee laws are silent on this subject, we doubt the legal right of school authorities in this state to make such appropriations.

Texas—I am inclined to the opinion that the school laws of this state do not authorize the expenditure of tax money for the support of playgrounds on the school yards during the summer vacation.

Washington—No regular routine school activities are permitted upon Saturdays or certain designated school holidays, nor are school boards authorized to make expenditures for school purposes on those days. This also applies to vacation periods.

Wyoming—We have no law covering this matter.

Opinions of State and Attorneys-General. The power of the schools to expend money on summer playgrounds is also denied by the attorneys-general in the following states:[1]

Florida—It would not be legal under our laws to use any part of the school moneys for the support of playgrounds by themselves, although of course such moneys can be used for the support of playgrounds in connection with the operation of the schools, as that would be a part of the expense of maintaining a school.

Georgia—The school funds of this state, so far as they are controlled by municipalities, would be available, under their rules, for contribution to the support of playgrounds; but the money going to the public schools of the state through the county boards of education would not be available, under the present laws, to support enterprises of that character.

Iowa—Under the laws of this state and under the rules of this department, school boards cannot purchase athletic equipment for use in the schools either in regular school session or during the summer.

Kentucky—Under the present Kentucky laws, it would not be legal for tax money raised for school purposes to be expended to maintain such playgrounds when the regular school term has ended.

South Dakota—So far the school laws have not provided for expenditure of money raised by public taxation for summer playground purposes. Without such law it would, of course, not be legal in this state.

Tennessee—There is no specific authority under our school law for the expenditure of school money for the support of playgrounds in the school yards during the summer vacation and on Saturdays.

West Virginia—The school laws of this state do not authorize the expenditure of money for playgrounds on school property during summer vacation, nor the employment of teachers and the purchase of athletic supplies when school is not in session.

Suggested Provisions for School Code. It is very important that all general provisions in the school code in relationship to community centers, extended use of the school plant, vacation schools, school playgrounds, etc., should be classified and codified. The school

[1] Quoted from letters to Jay B. Nash, 1929.

code should definitely include the following points:

1. *Governing boards.* Local boards of education should be given broad authority to conduct play and recreational activities for children and adults on any and all types of school property, on any school day or non-school day, using any state, county, or district money which may be available for educational purposes.[1]

2. *Facilities.* The school code should make clear that all school facilities, including auditoriums, gymnasiums, swimming pools, shops, laboratories, and other rooms, together with school yards, shall be at the disposal of the community when not in actual use for other purposes prescribed by law.

3. *Groups to be served and types of activities.* The school code should prescribe that these facilities should be made available to any group of citizens formed for recreational, educational, political, economic, artistic, cultural or moral activities.

4. *Initiation of activities.* School codes should be so broad that boards of education may on their own initiative conduct the activities referred to above. It should also provide that these boards shall, upon petition of the requisite percentage of qualified voters, submit the question of exercising the powers granted for any specific purpose to the vote of the people.

5. *Coöperation with other governmental units.* The school code should authorize the coöperation of boards of education with other boards of education or with any other governmental commissions or boards having the custody and management of public parks, playgrounds, libraries, museums, recreation centers, etc.

6. *Financial support.* The school code should authorize financial support of activities outlined in the act in the same manner as all other money for public education is acquired. Playground activities operated on any day of the year should be considered educational activities if so designated by the local boards of education, so that state, county, or district money may be expended for their support. Boards

[1] In Michigan, "any school district may operate a system of public recreation and playgrounds, and may vote a tax to provide for the operation of same." In New York, "schoolhouses and the grounds connected therewith and all properties belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt regulations for the use of such schoolhouses, grounds or other property, when not in use for the school purposes." New Jersey provides that: "the board of school estimate shall fix and determine the amount of money necessary to be appropriated to the board of education for the use of such public playgrounds and recreation places for the ensuing year, the amount so fixed and determined to be included in the certificates of the amount of money appropriated for the use of the public schools in such district for the ensuing year, and the board of commissioners or other governing body of such municipality shall appropriate said amount in the same manner as other appropriations are made by it, and said amount shall be assessed, levied and collected in the same manner as moneys appropriated for other purposes in such municipality shall be assessed, levied and collected, under the same conditions and with the same restrictions as now exist in such municipality." On the other hand, Maine provides that: "Amounts received by the towns from the state school fund may be expended by said towns, in conjunction with such funds as the towns shall raise and appropriate, for the following purposes in both elementary and secondary schools: the payment of teachers' wages and board, fuel, janitors' services, conveyance, tuition and board of pupils, textbooks, reference books and school supplies for desk or laboratory use. The unexpended balance of all moneys raised by towns or received from the state for the above purposes shall be credited to the school resources for the year following that in which said unexpended balance accrued."

of education could then establish playgrounds just as they equip chemistry laboratories, or establish a department of manual training or music.

7. *Certification of teachers.* The school code should set a minimum educational qualification for teachers at the playgrounds, recreation centers, and other places where recreational activities are conducted.[1]

8. *Time for conducting activities.* The school codes should authorize boards of education to conduct play and recreational activities for children or adults on regularly established school days, on non-school days, in the afternoon or evening of the same, or at any time deemed wise by the said board.[2]

[1] An example of an approved certification law is that of California:

A credential, valid for directing activities on a school playground which is open to the public outside of school hours, may be granted to an applicant who presents:

I. A certificate from a physician licensed to practice medicine and surgery certifying that the applicant is physically and mentally fit to direct activities on a school playground.

II. A recommendation from the school superintendent or employing principal in the city or district in which the playground is situated that the credential be granted for a specific position.

III. Two years of college training, or its equivalent, beyond graduation from a four-year high school.

IV. A minimum of four semester hours chosen from the following: (1) principles of community recreation; (2) technique of teaching games of low organization; (3) community dramatics; (4) community music; (5) handicraft; (6) story telling.

This credential authorizes the holder to direct activities on a school playground, and is not valid for teaching any part of the physical education program connected with the public schools.

This credential will be granted for a period not longer than one year, and may not be renewed. A full form of application will be required each year.

CITY CHARTERS

Suggested Provisions for City Charters. The charter should provide for the play and recreation system, and should specify the department or board which is charged with its administration. The charter should have the following general provisions.

1. *General powers.* In the general section of the city charter, apart from

[2] As an example of school codes which fulfill to a large extent the provisions here suggested, the following clauses are cited from the laws of Wisconsin, relating to common schools:

Section 43.50 *Use of school buildings and grounds for civic purposes.*

(1) Boards of school directors in cities of the first, second or third class may, on their own initiative, and shall, upon petition as provided in subsection 2, establish and maintain for children and adult persons, in the school buildings and on the school grounds under the custody and management of such boards, evening schools, vacation schools, reading rooms, library stations, debating clubs, gymnasiums, public playgrounds, public baths and similar activities and accommodations to be determined by such boards, without charge to the residents of such cities, and may coöperate, by agreement, with other commissioners or boards having the custody and management in such cities of public parks, libraries, museums and public buildings and grounds of whatever sort, to provide the equipment, supervision, instruction and oversight necessary to carry such public educational and recreational activities in and upon such other buildings and grounds. (2) Upon the filing of a petition with the city clerk, signed by not less than ten per cent of the number of voters voting at the last school or other election in such city, the question of exercising the powers granted for any of the purposes specified in subsection 1 shall be submitted to the electors of the school district at the next election of any sort held therein, and if a majority of the votes cast upon such question shall be in the affirmative, the board of school directors shall exercise said powers in accordance with said petition, pursuant to this section.

the section on recreation, the general powers of the city should refer to control over recreational facilities. The Oakland, California, charter, for example, gives the city the power, among other things, to "maintain all other public buildings, places, works, institutions, and establishments whether situated inside or outside of the city limits, which may be necessary or convenient for the transaction of public business or for promoting the health, morals, education, or welfare of the inhabitants of the city for their amusement, recreation, entertainment or benefit."

2. *Combination of park and playground activities under a recreation department.* If this is to be done, it must be specified by the charter.[1]

3. *Use of inclusive terms.* Narrow terms that are difficult to define should never be used. The term "children's playground" is an example. It is advisable to use phraseology as follows:

All parks, squares, plazas, public pleasure grounds, public playgrounds, recreation centers, and summer camps now or hereafter owned or controlled by the city, either within or without its limits, shall be under the exclusive control and management of the board of park and playground directors or recreation department. Said board shall have supervision, direction, and control of all games, recreation, athletic sports, physical exercises, and social activities to be conducted in any of the parks, playgrounds, or recreation centers of the city. Said board or department shall have power to organize and conduct physical training and exercises, athletics, sports, games, leagues, tournaments, and pageants in and upon the playgrounds and recreation centers owned or controlled by the city, and also in and upon other grounds, athletic fields, gymnasiums, swimming pools, and other suitable playground facilities for such purpose. Said board or department shall also have power to organize and conduct walking and other outing excursions and events to points either within or without the city limits.

4. *Authority to use other city or private property.* It will be to the advantage of the city to be able to use church gymnasiums, athletic fields, and other types of private property on a lease or a loan basis. The following phraseology is suggested:

The city council shall have the power by ordinance to set aside, either in perpetuity or for a definite period of time, any lands belonging to the city for use as parks, public playgrounds, recreation centers, and summer camps, and the same shall be under the exclusive control and management of the board of park and playground directors or recreation department. Said board or department may also make contracts for the temporary use of parks, playgrounds, camp sites and of grounds, athletic fields, gymnasiums, swimming pools, and other suitable places for the conduct of leagues, tournaments, pageants and other recreational activities.

5. *Power to make rules.* The charter should give the board of park and playground directors or recreation department the power to establish rules and regulations and the power to enforce these rules. The following wording is suggested:

The board or department shall adopt rules and regulations for the government of the aforesaid parks, playgrounds, recreation centers, and summer camps, and for the conduct of the aforesaid activities, leagues, tournaments, pageants, and excursions, not inconsistent with the ordinances of the city or of the laws of the state or with this charter.

6. *Power to receive gifts.* The following phraseology is suggested:

The city council may, in behalf of the city, receive donations, legacies, or bequests for the improvement or maintenance of said parks, playgrounds, recreation centers, and summer camps or, for the acquisition of land for new playgrounds, recreation centers, and summer camps; and all moneys that may be derived from such donations, legacies, or bequests shall be deposited

[1] See Alabama playground and recreation enabling act as an example of legislation authorizing this; reprinted in Jay B. Nash, *Organization and Administration of Playgrounds and Recreation.*

in the treasury of the city, and shall be withdrawn therefrom and paid out only in the same manner as is provided for the payment of moneys legally appropriated for the support and improvement of such playgrounds, recreation centers, and summer camps. If the moneys derived from such gifts, bequests, or legacies shall at any time exceed in amount the sum necessary for the immediate expenditures for the acquisition, maintenance, or improvement of land for parks, playgrounds, recreation centers, and summer camps, the city council may invest all or a part of the sum in interest-bearing bonds of the United States or of the state or of any municipality or school district thereof.

7. *Revenue from income-producing activities.* All money collected from income-producing recreational activities should be deposited in the general fund of the city to be expended in the regular manner; but the income from such source should be clearly shown as a separate recreational revenue in the annual budget, and the cost of such revenue-producing activity should also be shown in the schedule of expenditures of the operating department.

8. *Coöperation with other municipal departments and boards of education.* The Fort Worth, Texas, city charter, for example, gives the park board the

. . . power, with the consent of the school board, to organize and conduct play and recreational activities on grounds and in buildings under the control of the school board, provided that nothing in this section shall be construed to abridge the power of the school board to refuse the use of any of its grounds or buildings; it shall have power to equip, operate, supervise and maintain playgrounds, athletic fields, swimming centers and other recreation facilities on or in properties under the control of the park board; it shall have the power to take charge of and use any grounds, places, buildings or facilities which may be offered, either temporarily or permanently, by individuals or corporations, or other person whomsoever, for playground or recreational purposes.

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EDITORIAL COMMENT

Taxpayers Support Too Many Layers of Local Government

"No citizen of New York can live under less than four governments, federal, state, county and city. If one lives in a town outside of a village, he is under five layers of government, federal, state, county, town and school. If he lives in an incorporated village, another layer is added. If he lives in a town outside of the village, he may be in a fire, water, lighting, sewer and sidewalk district. In which case there are ten layers of government."

The foregoing is an excerpt from Governor Roosevelt's address at the Virginia Institute of Public Affairs. It reveals a condition not peculiar to New York and helps explain why local taxes are high and local services so often slovenly. When a property owner pays tribute to four layers of local government, not to mention ten, is he not helping to maintain a cumbersome system at the cost of an extravagant overhead?

In New York state the number of local units reaches the amazing total of 13,544. Governor Roosevelt correctly believes that this number is entirely too large. In one suburban county, local per capita taxes have increased fifteen times in the last thirty years; in one rural county they have increased twelve times. The politicians' tendency to make two governments grow where one grew before has not been checked, although nothing is clearer than that the invention of the automobile should enable us to reverse this policy.

The situation bears most heavily upon rural districts. A recent New York survey revealed that farm taxes in some cases consume annually as much as 10 per cent of the market value of the farm. Various proposals have been enacted to remove this discrimination and to enable the poorer communities to obtain decent government. State grants in aid and the sharing with the localities of state collected taxes are devices designed for this purpose, but as yet little has been done to rationalize the labyrinth of local principalities.

North Carolina has attacked the problem probably with more vigor than any other state. There the answer has been greater state centralization. If the tendency continues much longer, the county in North Carolina will be little more than a geographical expression. County consolidation has been urged by two governors of New York, and is being seriously considered in Virginia, Kentucky, Tennessee and elsewhere.

A recent New Jersey report enunciates the principle that there should be but one local government over a particular area. The local government should either be a municipality or a

county. Small municipal corporations, including the township, should be absorbed by the county and large municipalities should be removed from county jurisdiction. Certain functions now performed by the county, held to be of state importance, should be transferred to the state. While the county would thus lose on one hand, it would gain on the other by the addition or transfer of functions to it. These recommendations are being widely discussed in connection with the metropolitan problem in North Jersey and will no doubt exert a considerable influence.

All signs point to increased interest and activity in the redrawing of local government boundary lines and in a redistribution of responsibilities between the localities and the state. The idea is unwelcome to many officials, but should be a cause of rejoicing to the abused taxpayers.

Governor Roosevelt's appearance in Virginia was interpreted by newspaper writers as a virtual declaration of his intention to become a candidate for president of the United States. In a sense, therefore, he has made the reconstruction of local government a national issue. The answer will not be the same for all states. Whether the county is to become more important or less important, whether rural municipalities are to be developed as some have proposed,[1] or whether the solution is larger administrative districts than we now know, the future will tell. Clearly the opportunity for political scientists to seize active leadership for a helpful influence was never brighter.

[1] Theodore B. Manny in his suggestive book *Rural Municipalities* (published by the Century Company) holds that the county is a weak social unit usually too large for a primary group consciousness. Township boundaries, on the other hand, are arbitrary and inadequate. Mr. Manny, therefore, proposes a new rural municipality, following in some respects the 1929 North Carolina law providing for the incorporation of rural communities. The area of the rural municipality will not be a standard "block," but will be a highly flexible unit embracing an actual social and economic community. Such factors as frequency of village centers, average size of farms, road conditions, topography and competition of surrounding centers would determine the area. On the other hand, the New Jersey proposal assumes that the county meets the specifications of a rural municipality.

*

Zoning Appeals Board Illegal in Illinois

In Professor Tooke's Judicial Decisions' Department appears an extended note by Dr. Ernst Freund, distinguished authority on administrative law, which analyzes the recent decision of the Illinois Supreme Court holding invalid the delegation of power to vary the provisions of a zoning ordinance which zoning laws now generally entrust to a board of adjustment or appeals. The court sets forth the familiar distinction between the power to make law and the power to exercise discretion in the execution of law, and holds that the zoning ordinance in question undertook, in violation of the constitution, to delegate law making authority.

Professor Freund rightly remarks that the decision will cause regret to friends of zoning. Should the bald doctrine spread to other states it will indeed be unfortunate. The case in question, however, involved an arbitrary use of administrative power, and the decision, unfortunate perhaps for Illinois, may prove a beneficial warning to other states.

The semi-judicial function of a zoning board of appeals has proved advantageous in zoning administration, as in many other fields of governmental regulation, but the power to grant exceptions must not be used arbitrarily.

The zoning law or ordinance should set up standards or safeguards to control the exercise of administrative justice. This feature was lacking in the Illinois ordinance, although an amendment incorporating such standards has since been adopted. It is possible, thinks Professor Freund, that the benefits of administrative procedure in granting exceptions may be preserved under the new ordinance.

In the same department of this magazine Professor Tooke also emphasizes the care which must be exercised if the real purposes of zoning are not to be defeated by selfish or arbitrary practices, a danger against which he has repeatedly warned us. In a late decision, the Supreme Court of Pennsylvania reminds us that zoning ordinances must prescribe suitable standards by which the actions of appeal boards will be governed. To permit zoning officials to grant or withhold permits without the guidance of standards is to deny the equal protection of the laws. Zoning boards must act fairly in accordance with judicial standards. Professor Tooke believes that both practical experience and legal necessity demand more specific legislative definition of standards to control the discretion of zoning boards of appeal.

Highest State Court Sustains 5-Cent Fare for New York

"The victory for a 5-cent fare is only the fulfillment of a promise made by me when I ran for the office of mayor in 1925." Thus did Mayor Walker claim credit for the unanimous decision of the New York Court of Appeals which held that the subway contracts between the city and the Interborough Rapid Transit Company are contracts and not franchises, and that the 5-cent fare restriction therein is binding upon the company, a decision which probably spells the end of a prolonged litigation in which the company is said to have spent more than $1,000,000 to demonstrate that a 7-cent fare was necessary and proper. In seeking escape from its contractual obligations, the company first took its case to the lower federal court where it won. The Supreme Court of the United States, however, reversed the district court and remanded the issue to the state court. Now the final court of the state has decreed that the transit commission does not possess the power to increase the rate of fare on I. R. T. subway and elevated lines.

The first subways in New York City were constructed by the city under contracts nos. 1 and 2 (executed in 1900 and 1902 respectively). By these contracts the lessee was entitled to charge a fare of 5 cents, but not more. In those days a nickel was worth five cents and the fare provision was considered a victory for the company. But subway facilities soon proved inadequate, and to provide new extensions contract no. 3 was executed in 1913 under a 1912 amendment to the rapid transit act. In this agreement the fare restriction provision of the earlier contracts was continued to cover both the old and new lines. Although the 1913 contract was negotiated by the public service commission, it became legally effective only when approved by the board of estimate and apportionment of the city, in accordance with the terms of the statute.

The argument of the I. R. T. was that the public service commission law of 1907, which empowered the public service commission to alter fares where existing rates did not yield a reasonable compensation, gave the commission (and its successor, the present transit commission) jurisdiction over the fare fixed by the 1913 contract (the city and the company being financial partners in the enterprise).

The Court of Appeals held, however, that contract no. 3 was not such a modification of contracts nos. 1 and 2 as to constitute a new contract; that, therefore, the rapid transit law in force at the time of the original contracts continues to govern contract no. 3, and that the 5-cent fare agreement embodied therein was not affected by the law of 1907 establishing a public service commission. It further held that that provision of the 1912 amendment of the rapid transit act, which expressly required the approval of the board of estimate and apportionment for the validity of any subway contract, demonstrates the lack of legislative intent to bring the rate of fare within the jurisdiction of an administrative body acting without the city's consent. For these reasons the transit commission is without power to modify the subway contracts. Whether the legislature can by statute increase the fare during the life of the contracts is a question which the court expressly refused to discuss.

The court also held that the elevated lines were so intimately tied in with the subways both by contract and as an operating system that to allow a change of rates on the elevated roads and to deny it to the subway would tend to work disruption of the general plan embraced in contract no. 3 and would, therefore, be improper.

Since the court apparently does not leave open a single loophole through which the 5-cent fare may be threatened, the decision will have a tremendous effect upon the future of subways in New York City and particularly upon negotiations for a unified system. Most observers agree that, by removing hope for an increased fare, negotiations for consolidation will be expedited. But whether unification is accomplished or not the city is committed to the 5-cent fare. It cannot operate the new lines now under construction at a greater fare, although no competent observer assumes that a 5-cent fare will enable them to pay their way. While the decision is a victory for the city, it will remain to plague the city if the new lines are operated as municipal subways. And even if consolidation of old and existing lines is effected under municipal operation, it is improbable that a 5-cent fare will suffice, and sooner or later New York will have to decide whether the 5-cent fare is to remain sacred forever in the face of deficits to be met by continued subsidies from the taxpayers.

Subways have brought vast increases in real estate values which the city has never tapped by special assessments. It would have been proper to do so, but at this late date no politician has the temerity to suggest benefit assessments for new construction. Deficits will continue unless the city proves a shrewder bargainer in recapture proceedings and a more efficient operator than the private companies. A unified system will provide an opportunity for economy, but there is no reason to believe that the city under present political control can work magic in subway operation. According to Samuel Untermyer, the construction cost of the new subway system soon to be ready for operation has been excessive. He places it at $14,000,000 per mile as against $5,600,000 for lines built partly in war time and $2,560,000 for those built between 1900 and 1914. These costs are now under scrutiny by the legislative investigation committee of which Mr. Seabury is counsel. Whether or not the committee uncovers corruption in recent subway building, the high costs do not inspire confidence in the city as an efficient subway operator.

MAINE'S ADMINISTRATIVE CODE

BY E. F. DOW
University of Maine

Maine's new code consolidates twenty-eight existing agencies into four integrated departments. :: :: :: :: :: :: ::

THE administrative code introduced in the Maine senate January 21[1] was rejected and a substitute offered by the joint committee. The new draft was accepted, and signed by the governor April 2.

A thorough reorganization is not realized in the code, although important changes were brought about. A Maine editor summed up the situation as follows: "At the rate of multiplication in the last twenty years, it would not be long before every politician in Maine and their families would have a job as commissioner of something or other, places being created as fast as needed to take care of all hands. The new legislation is far from comprehensive, but—so far, so good."[2]

WHAT THE ACT ACCOMPLISHED

In place of twenty-eight of the existing departments and other agencies, four departments were created. Heads of these newly created divisions are to be appointed by the governor and council "to serve for three years" and select all subordinates and employees, with the approval of the governor and council."[3]

The department of finance is entirely new and consists of three bureaus: accounts under a controller, purchases under a purchasing agent, and taxation under a tax assessor. The budget is to be controlled by a budget officer, who may be the commissioner of finance, appointed by governor and council. In 1919 an attempt to introduce modern financial technique was made by means of a budget committee of the administrative-legislative type. However, no attention has been given by the budget committee to budgetary control, nor has a comprehensive budget document been produced; most of the highway funds and funds of several other agencies being omitted. An incoming governor was handicapped since the budget message had to be presented soon after inauguration. The previous governor in fact prepared the budget for his successor. Under the code the budget officer will be directly responsible to the governor; other provisions supply necessary powers for budgetary control of expenditures through work-programs, allotments, and transfers of funds from one department to another. The governor is given power to propose financial legislation, as the budget message is to contain complete drafts of legislation necessary to carry the budget proposals into force. The governor is given to the end of the fourth week of the regular biennial session to submit his budget proposals to the legislature, giving a newly elected governor somewhat more time than under the old system. Provision is also made for the governor-elect to confer with the governor and

[1] *Cf.* Hormell, "Administrative Reorganization in Maine," NATIONAL MUNICIPAL REVIEW, March, 1931.

[2] *Bangor Daily News*, April 2, 1931.

[3] Maine, *Public Laws*, 1931. Ch. 216, Sec. 2–3.

budget officer prior to inauguration. An advisory legislative committee of three, with minority representation, is to render aid when requested.

The bureau of accounting and control is given power to set up a unified accounting system, to conduct a continuous audit, and to abolish special state funds. The state treasurer is a constitutionally established, elective officer, and could not be abolished by law. However, his duties are limited to actual custody of funds. He must furnish a daily accounting to the controller, and make payments only on the latter's order.

Maine was one of about a dozen states which did not centralize purchasing. Some progress had been made through a voluntary purchasing agents' association, which was buying about 10 per cent of the state's supplies. Under the code act purchasing is nearly centralized, exceptions including expenditures made by the legislature, governor's council, state university and normal schools.

The bureau of taxation was given administration of gasoline taxes formerly under control of the state auditor. Constitutional obstacles prevented complete unification of taxing agencies, and the elective attorney general and secretary of state retained control of inheritance taxes and motor vehicle licenses, respectively.

HEALTH AND WELFARE

A department of health and welfare combines the former departments of health and of welfare, and is organized in the bureaus of health, social welfare, and institutional service. Eighteen agencies are abolished, including boards of trustees formerly controlling the state welfare institutions. An advisory council of six is to aid the commissioner. The commissioner controls institutional heads and local health officers. It would appear that health and welfare functions are now thoroughly integrated.

A department of sea and shore fisheries under a single commissioner takes over work formerly controlled by the sea and shore fisheries commission.

The department of education is given all powers previously exercised by the commissioner of education and his staff. The commissioner has been given control of the teacher's retirement system, the state library and the museum, and made chairman of the vocational education board. Eleven professional examining boards were not brought under the department but will continue to control examinations for the bar, medicine, osteopathy, etc.

Besides the four administrative departments named the code establishes in place of the state auditor's office a so-called department of audit under the direction of the state auditor. The auditor was formerly an elected official, his office being established by statute (1907). He is to be selected by the legislature, and has power to conduct a postaudit of all accounts of the state, and to install accounting systems and conduct audits for cities and towns. Former functions now taken away include auditing and accounting of current transactions, and gasoline tax administration. The auditor was in the anomalous position of checking his own accounts and financial transactions so that no complete and impartial audit was possible.

CONCLUSION

Major accomplishments of the Code Act include: (a) creation of an entirely new department of finance; (b) centralization of accounting; (c) centralized purchasing; (d) gasoline tax taken from state auditor and placed under tax bureau; (e) board of tax equalization created; (f) executive budget estab-

lished; (g) departments of health and welfare consolidated; (h) numerous boards controlling state welfare institutions abolished and control centered in the department of health and welfare; (i) commissioner of education's powers increased, and a department of education established; (j) auditor shorn of anomalous functions; (k) twenty-eight agencies abolished or transferred; (l) control of the new departments centered in the governor; (m) governor's control and responsibility over financial policy increased.

The act did not: (a) reorganize approximately two score bureaus, boards and other independent agencies, partly constitutional, partly statutory, but lacking integration; (b) form a governor's cabinet of all department heads, responsible to the governor and removable by him; (c) abolish the existing power of the governor's council of seven to veto appointments (council is selected by the legislature). The result is an indirect legislative check over the budget, or any other matter supposedly under the governor and for which he is held responsible; (d) abolish the elective, constitutionally established positions of secretary of state and treasurer; offices independent of the governor and seemingly unnecessary. A constitutional amendment is needed; (e) completely integrate finance, health and welfare, etc., since in every instance certain related functions were for political or constitutional reasons omitted from the code.

Since the above article was written, the opponents of the Code Act, including Daniel T. Field, chairman of the Republican state committee, have invoked the referendum clause of the state constitution. The governor has called a special election for November 9, hoping that the act he sponsored will be retained. — E. F. Dow.

HOW INDIANAPOLIS COMBINES POOR RELIEF WITH PUBLIC WORK

BY WILLIAM H. BOOK

Director of Civic Affairs, Indianapolis Chamber of Commerce

The emergency work committee in coöperation with public officials finds useful public work for those needing unemployment relief. ::

Is it feasible for a community to require that able-bodied men applying for poor relief perform some public work in exchange?

The question is, of course, best answered by actual experience. It seems to have been asked and answered for one city in the July number of the Review,[1] in an article which contained the following paragraph:

> But why not let the city find jobs in city employ for those who are helped? There have not been enough jobs to satisfy a tenth of the needs, and trial of this plan showed a heavy loss in labor efficiency.

[1] "Detroit Feeds Its Hungry," by William P. Lovett.

Those who have been associated with the Emergency Work Committee, Inc., of Indianapolis, believe that Indianapolis returns exactly the opposite answer.

We have no further knowledge of the effort that was apparently made in the other city to require some applicants for relief to perform city work, and, of course, no criticism of that effort is intended.

In Indianapolis, however, we do know that:

(1) There not only were and are enough jobs to satisfy the needs, but there seems to be an unlimited amount of such work. The specifications set up for such work require that it shall be useful and beneficial to the community, but that it shall not in any way conflict with regular or imminent plans involving employment of men in the customary way.

(2) There is no loss in labor efficiency. Our conclusion, based on experience of our own in the field, and the testimony of department heads making use of this labor is that it is as efficient as ordinary public department labor.

Beginning on an experimental basis on December 1, 1930, the plan has evolved, step by step. At first employment was given only to a part of the applicants for public poor relief, but eventually, having proved to our own satisfaction that the plan was workable, it was broadened to include all able-bodied applicants for public relief. In the experimental stage, the number of men working for relief was about 500 per week. Under the enlarged arrangement, the number reached as high as 1,766 in a week, but it has since fluctuated with the fluctuating demand for relief.

The program will be carried on throughout the remainder of the summer, now more than half gone, and machinery will be fully ready to operate as necessary throughout the coming winter. In seven and one-half months of operation of the plan, these workmen have performed over 650,000 hours of useful work for the taxpayers of the community, who will pay the cost. For the first time in the history of Indianapolis, a tangible, permanent return is being made to the taxpayer for his contribution for poor relief. For the first time, Indianapolis has something to show for such expenditures beyond the knowledge that hunger has been assuaged.

Another beneficial result of some permanence has accrued. A large number of men who, on account of unemployment, have been compelled to seek relief have been kept in the habit of industry. Their morale is higher today because of the knowledge that they have earned all that has come to them. During extreme weather, they received preferred treatment that contributed to their ability to make the best of a bad situation.

NOT A CURE FOR UNEMPLOYMENT

In the last analysis we regard our effort as being an improvement in the method of giving poor relief, instead of a solution of unemployment. It has, no doubt, often been said by citizens that those who must have relief ought to work for it; that both they and the community will receive benefit from such an arrangement. That such an arrangement has not been applied to the administration of poor relief quite generally heretofore is probably due, first, to the fact that the poor relief problem has not been of great importance to those who struggled with tax rates, and, second, to the fact that in large communities it has appeared too stupendous a task to put it in operation.

At first it seemed so to us in Indianapolis, when the idea was first voiced. But upon more thought it appeared to some that the difficulties would yield to careful planning and persistent effort. The enormous increase in expenditure for poor relief impending was the spur that urged us on.

PRELIMINARIES CAREFULLY PREPARED

A good deal of time was given to laying preliminary plans. As early as August, 1930, dummy plans were writ-

ten out and submitted for study and suggestion. By the time cold weather and a greater demand for relief arrived, the project was ready to put into operation.

Naturally, one of the first questions asked was, "Where will you get enough jobs?" It being agreed that the jobs must be on such public projects as would not displace a regular or prospective employee it seemed to some that the supply of possible jobs would be very limited. But to those of us who had been in continuous touch with public budgets and expenditures, and who had witnessed, or been party to, the elimination of a great many proposed public improvement projects, this was the simplest part of the problem.

The supply of jobs which fulfilled the above specifications appeared to be practically unlimited. After 650,000 hours of labor performed, we feel sure that the limit of such work has not yet been perceived. We, therefore, face next winter, with the larger number of men it will bring to us for assignment to jobs, confident that there will be plenty of work to go round. At one time, when it seemed that the number of workmen in an approaching week would be nearly 3,000, we had jobs for 3,000 ready. Only about half that number actually received cards for work. This is said only to indicate that the jobs can readily be expanded to whatever program is necessary, barring, of course, a complete economic breakdown.

It is our conclusion, after seven and one-half months' close contact with the effort, that to have success there must be, fundamentally, hard-driving leadership such as can best be given by an unofficial committee, and intelligent, diligent coöperation of the public officials, who, naturally, are the key to the success of the plan. We have had both. The conscientious, clear-thinking application of the plan by the heads of a few large municipal or county departments is, we quite clearly recognize, the principal reason for whatever success we have had. Without it, the plan would have been a complete failure.

Fortunately, we had men at the head of four large departments—public parks, public works, sanitation and county roads—who caught the vision of what was intended. They have gotten from the men a maximum amount of labor for their departments, with a minimum of discontent on the part of the men.

OPERATION OF THE PLAN

At the beginning, a small sum of money was raised to try out a month's experiment. It was decided, and there has been no change from this, to make the return to the relief applicant small, so that he would never become content to remain on "made work." Men were selected by the relief agencies and sent to us for assignment. They were paid thirty cents an hour for three days work of eight hours each. That went on until the money was exhausted, and first results indicated sufficient success to continue the experiment.

Early in January, a large sum of money was made available by the Community Fund. Then the public relief agencies—in Indiana, the township trustees—were asked to join in the plan. They agreed to do so. Their relief appropriations and the money provided by the Community Fund were pooled. Men—a larger number, now—were selected by the private agencies, and sent to the committee for job assignments. They worked, as during the first stage, three days of eight hours each. They received therefor an order of relief from the township trustee, according to their need, and the balance of what they had earned at

30 cents an hour, in cash from our fund.

This enabled us to operate on this basis until warm weather set in. At the first of May it was determined, at the request of the trustees, to put the plan into effect for all able-bodied applicants for public relief. Our cash fund had been exhausted, and so there was then no cash available for wages. Men, then, were requested to perform two days' work for whatever amount of relief they required from the public agency. This is the plan that has been in effect throughout the late spring and summer.

It now seems quite likely that next winter we shall continue the plan of working two days for trustee relief, but that we shall again recognize the wisdom of providing some cash supplement.

It is our feeling that the man who is getting relief for the first time in his life needs in cold weather a little more than would ordinarily come to him from relief agencies, for the little necessities he is accustomed to, and which the hardened relief-taker either does without or knows how to get elsewhere. Therefore, we shall seek another fund of money, this time much larger than last winter, to provide thus for every applicant who meets that specification.

DIFFICULTIES SURMOUNTED

There have been other complications, of course. We had to face the liability of any employer for injury to an employee, but thus far have met it without serious trouble. The technical job of handling the assignment of men to work, so that none had far to go to his job, was not easy to work out. The Indianapolis Employment Bureau lent the services of George E. Gill, its manager, to be the manager of our bureau. He efficiently organized the task so that projects were near as possible to the communities where the needy workmen lived, or so that transportation was given where needed, or so that projects were available for rainy days. When cash wages were paid, there was an efficient handling of the payroll, with the least possible inconvenience to the men. A thousand details were provided for quietly and efficiently.

WHAT THE WORKERS HAVE DONE

Of the 650,000 hours of labor, the park department has used over 250,000 hours. Its work has entirely met the specifications of the committee—cleaning, preparing for later improvements, or actually improving park lands that had heretofore accumulated faster than the park district could improve them, performing a great many tasks of clean-up and improvement that are just not carried out in ordinary years because of lack of sufficient appropriations to do them. Roadways have been cleaned, repaired or built, park areas cleared of underbrush or dead wood, sodded and planted, unsightly spots about other public areas cleaned and landscaped. None of this would have been done this year, or next, and much of it probably never at all.

The sanitary district has cleared land on its property, but its greatest use of this labor has been in cleaning, straightening and beautifying the beds and banks of small streams that in these days of modern drainage had been transformed from beautiful little brooks to public catch-alls for trash. For a month during the spring, it made use of this labor to clean alleys and vacant lots, a function not heretofore performed by anyone. Unbelievable amounts of rubbish were collected and moved to the city dumps, even from our "best" residential sections. Undoubtedly this project offers continuous opportunity for "made work" jobs.

The county roads department has carried out a project long dreamed and

despaired of—the cleaning of roadsides, digging of side-ditching and beautification of the rights-of-way. Many other departments have used this labor for projects for which they had no financial provision. The street commissioner undertook to sweep the downtown sidewalks, the municipal airport to get work done not otherwise provided for, the city hospital to beautify its grounds, the city street repair department to cut back curbs at street intersections, all public building departments to carry out cleaning plans not otherwise provided for. All this has been done, and is being done, at no additional cost to the taxpayer than his expenditure for poor relief (which would have been spent anyway), other than the very small costs of supervision or materials.

COMMITTEE PLEASED WITH RESULTS

Our committee, after appraising the results of the first six months' effort, reached this conclusion: "That the 'made work' plan of creating useful work for applicants for relief has operated successfully, and will continue to do so; that it is quite possible to create a reservoir of such work—projects that would not be carried out in the regular course of events—which will indefinitely supply emergency employment to all able-bodied applicants for relief on the basis of employment in return for relief."

The private agencies, having cooperated in obtaining the results, are beginning to turn to the committee and ask it to provide also such employment for those who will receive relief from them.

I speak of our committee. It is the emergency work committee of the Indianapolis Commission for Stabilization of Employment. This body of citizens was created in February, 1930, to try to do just what its name says. It has undertaken various things along that line, more or less successfully. It conceived as one of its functions this application of "work for relief," and created the emergency work committee to carry out the job. G. M. Williams, president of the Marmon Motor Company, has headed the general commission, and A. Kiefer Mayer, another successful young business man, has been at the helm for the emergency work committee.

BRAIN MUDDLE IN CHICAGO

BY HERBERT D. SIMPSON

Of the Institute for Economic Research and Professor of Economics, Northwestern University

Chicago's financial difficulties no longer spring from mere squabbles of politicians but involve conflicts of economic interests of various tax-paying and money-lending groups. :: :: :: :: ::

Tax muddles, like tadpoles, evolve by successive stages from lower to higher forms. Chicago's "tax muddle" of the past few years developed last summer into a "financial muddle," and now has evolved into the higher stage of "brain muddle"—by which is meant an endless multiplicity of proposals and remedies for the situation, hopeless confusion of thought on the subject, and the apparent inability of any two groups to agree on anything.

To outside observers this may seem to be ground for disparagement, and within Chicago it has produced a great deal of pessimism. Yet the fact is that this is the usual—almost the normal stage that precedes the stage of constructive action. There was no brain muddlement on taxation in Chicago five years ago; there weren't enough ideas on the subject at that time to muddle anybody's brain. The present condition is a symptom of the amount of thinking that Chicago people have been doing during the past three or four years. We have had many similar muddles in our past history, sometimes on a national scale.

CITY VERSUS DOWN STATE

In the first place, we have an unfortunate cleavage between metropolitan Cook County, which contains half the population of the state, and the other half of the state, a cleavage that rests on geographical, historical, and economic factors. At the present time, for example, the Illinois Agricultural Association and the rural sections generally favor an income tax, arguing with good reason that farm property is disproportionately taxed. But business groups in Cook County are opposed to any such income tax, arguing correctly that it will draw revenues from Cook County for the benefit of the rest of the state. A number of groups in Cook County will support an income tax, provided that the bulk of the revenue is returned to the localities from which it is derived, and provided that payment of property taxes shall be allowed to "off-set" corresponding amounts of income taxes due. Cook County groups prevailed in incorporating the first of these provisions in the proposed constitutional amendment of last summer, authorizing an income tax; but for that very reason the Illinois Agricultural Association turned round and helped defeat the amendment.

Within Cook County there is an almost equally sharp alignment between the city of Chicago, particularly the "downtown" interests, and the outlying sections of the city and county. The downtown groups largely supported the recent reassessment ordered by the state tax commission and were materially benefited by the readjustments which it brought about. The outlying cities and areas had been favored for years, through their local township assessors, with lower assessments than prevailed in Chicago, and

they suffered under the reassessment. The consequence, in the present juncture, is that while many of the downtown groups are supporting constructive proposals for the creation of a centralized assessment administration in the county, the outlying cities and towns are very generally fighting to retain their local township assessors.

In the construction of the proposed subway system, likewise, the outlying sections naturally demand that a substantial portion of the cost shall be levied in the form of a special assessment on the downtown district, which will be particularly benefited by the subway. The growth of some of the outlying business centres will actually be retarded by the construction of the downtown subway. On the other hand, the downtown groups are sparing no effort to have the cost of the subway levied as largely as possible upon the general taxpayers.

Thus we have a cleavage between Cook County and the Down State, on the one hand; and on the other, an equally sharp cleavage within Cook County, between downtown Chicago and the rest of the county.

THE DEBTOR-CREDITOR CONFLICT

Coming into Chicago, the historical student will wonder whether he has dropped back into the middle of the past century; for the first thing he will encounter is that age-old conflict between the debtor and the creditor classes. Right here in Chicago we are having the days of the Granger Movement, the Populists, and the "Mortgage Rebellions" all over again. The large banking groups who have carried the city through the recent period of threatened insolvency are primarily interested in securing repayment of the tax anticipation warrants of the past two years, which they still hold. They argue, with good ground, that the maintenance of the city's credit is the indispensable prerequisite to the restoration of business prosperity. They are naturally opposed, therefore, to any form of tax relief that will involve postponement of tax payments now due or will threaten any dislocation of the regular course of future tax payments.

On the other side are the debtor groups, consisting chiefly of real estate owners, who pay 84 per cent of all the tax revenues raised by the city. They are debtors in a double sense.

In the first place, they are saddled this year with two years' tax bills, amounting to a total of approximately $548,000,000. It is true, this total includes one year's taxes deferred from a previous year on account of the obstructionist tactics employed by the board of assessors and board of review in connection with the reassessment; but the historical explanation of the fact does not lighten the actual burden falling, as it does, in a year of drastic deflation and acute distress. Since the banks hold the bulk of the city's liabilities, and since real estate owners pay the bulk of the revenue that will liquidate these liabilities, the situation has the effect of putting the real estate owners of the community in the position of debtors to the banks.

In the second place, real estate in Chicago, as elsewhere, is heavily mortgaged. A large proportion of these mortgages are carried by the banks or find their way eventually into the banks. So that real estate owners find their properties subject to two heavy liens, mortgages placed by themselves in times of greater prosperity and accumulated tax burdens imposed by the city in a period of unmitigated waste and extravagance—and both liens are held directly or indirectly by the banks.

In this situation, real estate groups are more interested in saving them-

selves from bankruptcy than they are in insuring prompt payment of the tax anticipation warrants held by the bankers. They want immediate relief of some kind from somewhere. For the moment, they are not interested in constructive reform that may require two or three years for its completion. "Taxes three years from now," said one of their representatives, "may be of no interest to us; for as things are going now, we'll all be dead or bankrupt by that time."

REAL ESTATE WANTS TAX RELIEF FIRST

Concretely, the result of all this is that the real estate groups are directing their efforts almost entirely toward reduction or postponement of tax obligations now due, rather than toward any permanent improvement of the tax system itself. These efforts have taken the form either of suits for annulment of the current two years' taxes by the courts, on grounds of discriminatory assessment, deprival of constitutional rights through the arbitrary conduct of the board of review, and failure to assess personal property; or of demands for postponement of payment through funding these taxes over a period of ten to twenty years. The cleavage which any such proposals must create between the "creditor classes," on the one hand, and the "debtor classes" on the other, is sufficiently apparent.

It is not so apparent why the debtor groups themselves should be split into conflicting camps, but such, unfortunately, is the case. In the first place, the Chicago Real Estate Board, after prolonged inability to take any definite position upon the tax problem during the past five years, has at last announced its intention of assuming a positive leadership in the cause of constructive reform. It lacks only a program or some indication of the general direction in which it might contemplate leading.

In the second place, there has been organized—under the auspices of the Real Estate Board—a Property Owners' Division, launched for the specific purpose of securing tax relief for real estate. This organization has declined thus far to coöperate with other groups, on the ground that it has a definite economic interest to promote and that it can hold the support of its members only by working specifically for that interest. Its chief effort thus far has consisted in a campaign to secure 10,000 members; it has advocated the funding of accumulated taxes; whether its program for tax relief will extend beyond this, is not apparent.

In the third place, an Association of Real Estate Taxpayers has been organized, representing a considerable group of real estate owners who are demanding more radical and immediate action than they have been able to secure through the Real Estate Board or the Property Owners' Division. In parliamentary terms, the Real Estate Board represents the "Right," the Property Owners' Division the "Centre," and the Association of Real Estate Taxpayers the "Left" of real estate sentiment in Chicago.

The Real Estate Taxpayers' Association first sought an order from the state tax commission for a reassessment of personal property, which under present methods of administration largely escapes taxation and thereby adds to the burdens of real estate. The writer served on a committee appointed by the state tax commission to consider this proposal. The committee advised that such an order, applicable to the 1930 assessment, would be impracticable on account of the shortness of time and the inadequacy of the resources at the disposal of the tax commission. The committee recom-

mended, however, that the tax commission give specific assurance that all the powers of the commission would be utilized to bring about a more adequate assessment of personal property in the quadrennial reassessment of 1931. The new state tax commission, appointed by Governor Emmerson since that time, has thus far given no indication of any effort to remedy this situation.

A TAX STRIKE URGED BY SOME

Later the Taxpayers' Association sought and secured a *mandamus* from the Superior Court of Cook County, directing the board of review to reopen hearings on the last assessment. The board had arbitrarily refused to hear some thousands of complaints that had been filed with it. The Association is now preparing to carry to the Illinois Supreme Court a group of cases demanding the annulment of the recent assessment, on the ground that the inequality of assessment as between real estate and personal property is in violation of the uniformity clause of the state constitution. One of their published exhibits is a list of addresses for the delivery of personal property schedules, on which are penciled instructions, written, it is alleged, by the precinct captain of that precinct. One of these directs, "Do not leave schedules at these addresses;" half-way down the sheet, at the head of another list of names and addresses, is scrawled the injunction, "Hit these extra hard."

This group has joined with other real estate groups in the demand for funding accumulated taxes; and in addition to all these lines of attack, the Association has called a "tax strike," urging its members and other real estate owners simply to refuse to pay this year's accumulated taxes and to allow these taxes to go delinquent, pending the outcome of the various matters now in conflict.

Conservative groups have condemned the tax strike in unsparing terms; under any ordinary conditions one could scarcely do otherwise. Even in the present extraordinary situation, one may not be able to condone it. But we will make headway more rapidly when those business and civic leaders who denounce the strike so unsparingly come to realize that the present tax strike is only part of a general situation that has prevailed for years in Chicago. The board of assessors, board of review, and tax officials generally have been on strike for years, so far as performance of their legal duties is concerned; the city government has been on strike; the board of education has been on strike; law enforcement machinery has been on strike; the legislature has been on strike; the governor has been on strike, so far as the tax problem is concerned. About the only group left to join the general strike was the taxpayers themselves; and it is difficult to understand why a business community which has for years condoned an open and avowed strike on the part of officials at the head of the tax system, should be shocked when a group of taxpayers at last adopts a similar policy. It reminds one of the occasion when a celebrated German premier, master of diplomatic intrigue in his generation, wrote to an Austrian foreign minister of similar repute, that he was "shocked" to find that the Russian foreign minister had "deceived" them both.

OTHER GROUPS INVOLVED

Such is the situation among the real estate groups. One other group might be included in the real estate field, namely, the Chicago Association of Building Owners and Managers. But this association represents the large downtown properties and is not usually

associated with the other real estate groups. The Building Owners' Association supported the reassessment, thereby helping to precipitate the present situation, but has not taken a definite position on the problems that have risen since.

An influential group of teachers' organizations in Chicago, which supported the reassessment, is now supporting measures for a reorganization of the tax administration, and is reaching out to the State Teachers' Association and the Illinois Agricultural Association in support of a state income tax.

And finally there are the manufacturers' associations, occupying somewhat the position of the Tories in the period of the Continental Congresses. They have been in a position of advantage under the old régime and now constitute the backbone of opposition to any new proposals. They are opposed to repealing the old uniformity clause of the constitution, are opposed to an income tax, opposed to the taxation of personal property, and opposed to increased centralization of tax administration. They are in favor of "lower taxes," wherein they find themselves in agreement with everybody.

We have not discussed the political cabals, particularly the board of review, board of assessors, and the local assessors but including pretty much the whole hierarchy of political organizations, shutting themselves up in their various political bulwarks and fighting off attacks upon them from every direction. They have not been treated in our analysis above, because they are not now a formidable factor. The conflict has passed beyond that stage; though there are many well-intentioned people in Chicago who still think that the issue is between the citizens or "the public," on one side, and the politicians, on the other. One who thinks in such terms now does not know the situation in Chicago. The problem now is solely one of agreement among citizen groups, particularly among a small number of influential business groups and business leaders.

But this problem is the most difficult of all. In the absence of political or governmental leadership, various citizens "commissions," "committees," and "conferences" are working to bring about such agreement. It takes patience, persistence, and a vast amount of practical understanding to replace muddlement with horse sense. But the brain resources now engaged upon the problem in Chicago are such that the muddle must eventually give way.

TAX INVESTIGATIONS IN TWENTY-SIX STATES

BY GEORGE A. GRAHAM
Princeton University

Dissatisfaction with the general property tax, friendly advances to the state income tax and attention to local government economies feature the official reports. :: :: :: :: :: :: :: ::

Official commissions or legislative committees in more than half the states have been or are now investigating the systems of taxation. Seventeen commissions have reported in the last fifteen months. The forces behind the investigations are chiefly dissatisfaction with the general property tax and objection of real estate owners to their present tax burdens. No committee has reported without recording some defect in the administration of the tax on property; nor has any committee attempted to defend a tax on general property. If there is any significance in unanimity of official opinion, the general property tax is doomed.

THE INCOME TAX

The most striking feature of the investigations, however, is not the destined demise of the tax on general property; it is rather the general endorsement of a tax on income. Especially significant is the recommendation that income tax laws be passed in Ohio, Indiana, Michigan, and Pennsylvania, as well as in the less densely populated or less industrial states of Iowa, South Dakota, Colorado, Utah, Washington, Oregon, California, New Mexico, and Texas. With these states should be considered Illinois and Florida. The Illinois Joint Legislative Committee again recommended that the constitution be amended to permit taxation of income and classification of property for taxation; and in recalcitrant Florida the Citizens' Finance and Taxation Committee recommended that all constitutional restrictions against the income tax be removed. In only two states, Maryland and Arkansas, were the legislatures advised against the income tax. The Arkansas Committee on Business Laws and Taxation was divided on the subject and reported four to three against an income tax; but the minority's advice was followed by the legislature.

Support for the income tax is not altogether surprising; the nature of the dissatisfaction with the existing tax systems is significant. Some dissatisfaction with the general property tax could be allayed by confining the tax to tangible property. But it would not be possible at the same time to reduce the tax burden upon real estate.

Features of the income tax laws recommended differ. In Pennsylvania taxes upon net income either from all business units or from all corporations have been recommended to replace existing taxes upon corporate franchises. In Ohio a personal income tax has been suggested as an alternative to a low rate tax on intangibles; the Governor's Taxation Committee is not yet ready to commit itself to one rather than the other. Taxes on both personal and corporate

income have been recommended in Indiana, Michigan, Tennessee, South Dakota, Washington, and California; and in Colorado and Utah taxes upon both personal income and income from all types of business units have been recommended. In West Virginia the proposal is to levy an occupation tax based upon net income to replace the sales tax, and to substitute eventually a modern general income tax. Investigators for the Missouri State Survey Commission favor the substitution of graduated rates for the existing flat one per cent on personal income, and substitution of state for local administration of the tax. Although the bills suggested vary from state to state they agree upon graduation of rates on personal income and administration by state rather than local officers. It is everywhere recognized that careful administration of an income tax is necessary for its success, and that a central department can better be relied upon than local officers.

EMPHASIS UPON CENTRALIZED ADMINISTRATION

The emphasis upon central administration is not confined to the income tax. The reports also recognize a need for thorough supervision of local assessors by the state in administering property taxes. Seventeen states have particularly emphasized this point. In six states it is proposed that state tax commissions be created with power to administer state taxes and to supervise local assessors, and in seven states it is proposed that existing state tax departments be strengthened.

An Ohio sub-committee of the Governor's Taxation Committee has recommended that county auditors and treasurers be required to pass examinations given by the state tax commission before being eligible to election; but none has recently gone so far as the New Mexico Special Revenue Committee of 1920 which advised direct state appointment and control of property tax assessors.

In addition to central supervision, the necessity for generally improved practices in assessing property is stressed. Attention is given to standardized methods of assessment, removal of political pressure, and growth of sound traditions. The West Virginia report is characteristic in saying that what is needed is "an unusual revival of public spirit, something almost akin to a religious revival" to break the traditions of poor tax administration. It also expresses the fact, which is implied and avoided in many of the reports, that equal assessment of real estate does in effect provide a new source of revenue. To aid assessors a stamp tax on deeds has been suggested in Ohio and the compulsory filing of a confidential affidavit of true consideration in West Virginia.

It is clear that although the findings of the investigators forecast the final departure of the general property tax, their recommendations are equally positive evidence that taxes on property, especially real property, are a durable part of local tax systems.

UNCERTAINTY AS TO TAXES ON INTANGIBLES

Low rate taxes on intangible personal property are apparently in an uncertain position. They have been suggested as alternative to a tax on personal income in Ohio, Illinois, Florida, and West Virginia. The Iowa Joint Legislative Committee on Taxation proposed a mortgage registration tax in addition to an income tax. A constitutional amendment was recommended by the 1928 Recess Tax Commission in Massachusetts to authorize taxation of intangibles at a low

rate, or their exemption from the property tax. On the other hand, seven states have been advised to abandon the property tax on intangibles, and three of them, Vermont, Pennsylvania, and California, have been advised to abandon low rate taxes on intangibles. Abandonment is to be contingent upon the adoption of a personal income tax.

Intangibles are not the only limb of the property tax which is in danger. While the surgeon's knife is being brandished, at least a few flourishes are being made to lop off the taxes on tangible personal property as such. Larger exemptions, and exemptions of more types of personal property have been prescribed in seven states.

SEPARATION OF SOURCES

Complete separation of state and local sources of revenue is another practice with uncertain support. Abandonment of the tax on property for state purposes has been recommended in five states, Vermont, Missouri, Indiana, South Dakota, and Oregon; reduction of the state tax on property has been recommended in four others, Iowa, Washington, Utah, and Florida, but with the express injunction that some state tax on property be retained. In addition, the California Tax Commission expressed dissatisfaction with the sort of separation of sources practiced there. The reasons advanced for retaining a state levy on property are the impetus it gives to state supervision of local assessment and the stimulus to wide interest in state expenditures. The reports are unanimous, however, in recommending that direct levies by state government on property should be reduced.

LOCAL GOVERNMENT THE CRUX

Perhaps more impressive than the tax reforms suggested is the attention given to public administration, particularly local government. It did not take the commissions investigating property taxes long to discover officially that most of the taxes were being levied and spent by local governments. It seems to be tacitly recognized, also, that the functions of government cannot be reduced and that emphasis must be placed upon economic methods of administration. It is evident that the process of "cultural diffusion" goes on in American politics, as well as in other phases of life; many of the measures recommended are the tested practice in at least a few states, or are widely advocated by researchers and reformers. Among the recommendations are budgeting capital improvements, pay-as-you-go, central purchasing, improved personnel administration, use of serial bonds, uniform accounting, state auditing of local accounts, abolishing the office of constable, consolidation of city and county offices, and county consolidation. An attempt has also been made to devise more effective debt limits, tax limits, and special assessment limits.

Among the scattered recommendations there is noticeable concentration upon state administrative supervision of local officers. Supervision of assessment has already been mentioned; in seven states it is proposed to go further and to give state officers power to supervise budgets, tax rates, or borrowing. In Tennessee the committee would give the state tax commission a veto power over appropriations, tax increases, and borrowing. In North Carolina the Tax Commission's advice is to provide by general law that refunding loans of local governments may be made with the approval of the State Sinking Fund Commission, and with considerable discretionary power vested in the commission. In Washington the Tax In-

vestigation Commission is not ready to try state supervision, but has proposed a county board to correlate all local government budgets and to put its opinion on all bond issue ballots. A few state governments get attention as such, and the "dogmas of administrative reform" are repeated with conviction for their benefit.

The inferences to be drawn from the tax investigation reports come as forcefully from the omissions as from the positive recommendations. Problems of local government are everywhere recognized as permanent and perplexing; the expense of local government is probably the basic reason for most of the investigations; the general property tax is universally condemned as a carry-over from conditions long past; and yet, with one or two exceptions, no report questions the soundness of the fundamental features of the prevailing system of local government. It is implied that local government is a matter of operating school district organizations, township organizations, county organizations, and city organizations, with no suggestion that all are part of a process of meeting definite wants of people. If these reports are evidence, the purpose of government to most men in public life is the operation and perpetuation of existing governmental devices. Local government is the sum total of existing local governmental devices rather than the sum total of local public problems.

NEW JERSEY SUGGESTS LOCAL GOVERNMENT REORGANIZATION

In this respect the reports of the New Jersey Commission to Investigate County and Municipal Taxation and Expenditures are an exception. The commission recommends comprehensive changes "to simplify the organization and structure of local government." The policy underlying the recommendations is to utilize larger operating units. The program is to shift many of the county's existing duties to the state, to shift others to a regional government with power over a wide area, and to transfer all remaining tasks of local government to the county or the city. All details are not yet clear; but the comprehensiveness of the plan is striking.

On the face of it the plan is radical; but its difference from the conventional plan of tax reform suggested generally is more apparent than real. The general plan is (1) to raise a greater portion of public funds through taxes administered by the state, (2) to distribute the funds to various subordinate local governments and thus to reduce their property tax levies, and (3) to provide state supervision and advice for these local governments in order to get economic expenditure of the funds. The New Jersey plan aims at the same reduction of property taxes by shifting functions of local government to the state and by performing the remaining tasks of local government in what are believed to be more economic units. It is expected that the state government will rely on other sources of revenue than direct levies on property. On this point there is substantial agreement of opinion in all states.

The report of the North Carolina Tax Commission also advocates transfer of functions to the state government. After an extensive survey of highway administration and experience with optional state maintenance in a few counties, the committee has recommended administration by the state of all public roads. This would take from the county and the township one of their most important functions. The proposal is now law.

The reports differ from state to

state in comprehensiveness of the recommendations and in data presented as a basis for conclusions. Careful studies of proposed and existing taxes have been made in some states, notably Ohio, West Virginia, Tennessee, North Carolina, Missouri, and Utah. In others the findings are not so clearly presented, or are reported as conclusions arrived at after a series of public hearings. Detailed recommendations naturally vary widely, and not without some conflict. While repeal of the sales tax has been recommended in West Virginia, the sales tax has been suggested in Maryland and Indiana, and as a temporary measure in Florida. Massachusetts is ready to drop the tax on "corporate excess," apparently, while it is suggested in Iowa that such a tax be levied. Most of the investigators disregard poll taxes as a source of revenue; in Vermont, Tennessee, and Indiana, however, they are hopeful enough to recommend the poll tax. In Missouri, Iowa, and South Dakota the commissions believe that small incomes can be taxed more effectively through an excise on tobacco, soft drinks, and admissions.

Despite their conflicts and variations, the tax investigation reports indicate with some certainty that tax systems at present are not satisfactory, that the general property tax is doomed, that a greater effort will be made to improve tax administration, that income taxes are destined to be a general source of revenue, that the movement to provide central supervision for local officers is under way, and that there is not yet much disposition to melt up and recast the machinery of local government.

STATE CENTRALIZATION IN NORTH CAROLINA

BY PAUL W. WAGER
University of North Carolina

To secure greater efficiency in administration, the state has assumed historic county functions, involving shift in tax base away from general property. :: :: :: :: :: :: :: ::

MODERN conditions demand a reallocation of governmental functions in order to provide larger administrative units and a broader tax base. The need for the adjustment arises, of course, from the change in our mode of living. The radius of one's daily activity has been so expanded that the governmental services that could be provided by small units are no longer adequate. Moreover, the support of modern services wholly by local taxation cannot be justified on the basis either of benefit or taxpaying ability. The transfer of functions from the local unit to the state is well illustrated in the case of North Carolina.

ALL ROADS TAKEN OVER BY THE STATE

For the last ten years the state has been taking over, reconstructing, and assuming the maintenance of the primary roads. By the end of 1930 the state highway system included 8,920 miles, 6,000 of which were hard-surfaced. The cost of building these

roads has been about $175,000,000, and the state highway debt on June 30, 1930 was $108,000,000. The revenues from the gasoline tax and automobile licenses have been reserved exclusively for the state highway fund and the proceeds have been sufficient to maintain the state roads in first class condition, meet interest payments, make ample provision for the sinking funds, and leave several million dollars a year for further construction. The only exception to the above statement is that in 1929 the gasoline tax was increased from 4 to 5 cents a gallon, and for two years the sum of $3,000,000 a year (slightly more than the proceeds from the extra cent tax on gasoline) was apportioned back to the counties. The counties were permitted to use this grant either for road maintenance or road debt service. Most of them elected to use it for the latter purpose.

In 1930 a rather exhaustive survey of county roads, road organizations, and road finances was made under the joint auspices of the state tax commission, the state highway commission, and the United States bureau of public roads. This survey revealed that there were 45,000 miles of roads outside the state highway system on which the counties and districts were spending from 6 to 8 million dollars a year with varied results. Some counties were maintaining their roads in good shape, others wholly inadequately. Some were utilizing convict labor profitably, others at an uncertain cost. Some had suitable road machinery, others lacked adequate equipment. Some had been extravagant in the purchase of machinery. Twenty-six counties had township or district road organizations either in place of or in addition to a county organization. All of the counties had large and generally mounting road debts. The aggregate road debt of the counties and special districts is at least $100,000,000 and in many cases there is evidence that the proceeds of bond issues have not been expended wisely.

At any rate, the survey convinced Governor Gardner that more relief could be given the taxpayers by having the state take over the roads than by increasing state grants to be expended locally. Consequently, the general assembly of 1931 increased the gasoline tax to six cents a gallon and provided that on July 1 of this year the state take over and maintain all the roads of the state. An appropriation of $6,000,000 was made to maintain the 45,000 miles of local roads. All local road districts and road boards are dissolved. The state is taking over, with credit, such road machinery as it can use and permitting the counties to dispose of the rest.

The state highway commission is reorganized, all district lines and district representatives being eliminated. The new board has divided the state for administrative purposes into five divisions and twenty-five districts. Within each district there will be as many maintenance outfits as can be kept continuously employed. The construction of new roads and the building and repair of bridges will be delegated to special crews with the proper machinery. It is believed that, on the whole, the local roads can be kept in better condition than they have been kept heretofore and at lower cost. Whatever the cost it will be derived entirely from motorists and there will not be one cent levied on property for road purposes, except for road debts.

ALL MALE CONVICTS TO BE EMPLOYED ON ROADS

Not only are property taxpayers being relieved of the cost of building and maintaining roads, but also of the cost of supporting their convicts. The road law provides that the state take

over and employ on the highways all able-bodied male convicts serving sentence of 60 days or more. At present there are about 3,700 such prisoners so employed. They will be housed in district camps and used wherever they are needed. The honor system will be invoked as far as proves practicable. The clothing for the prisoners will be made at the state prison (an appropriation was made for a new one) and much of the food will be grown on the state farms or at the district camps. The state is taking over as many of the county camps as can be made suitable for its purposes.

It is obvious that it will not be necessary for each of the state's one hundred counties to maintain a jail to house a few women, old men, and misdemeanants. It will be feasible for several counties to unite in the support of one jail. Twenty-five or thirty new jails have been built in the last ten years and it is to be hoped that no others need be built. Indeed, it is to be hoped that the end of the county jail is in sight. No one will mourn its passing.

SCHOOLS

The constitution of North Carolina provides that the "General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools . . . which shall be maintained at least six months in every year." There have always been those who contended that this meant state support of the six-month term, but never until this year has this view prevailed in the legislature. One reason why the state has been reluctant to assume this obligation is the fact that it relinquished the property tax in 1920, and its revenues from other taxes have not been sufficient to assume the cost involved. It has, however, gradually increased its contribution in the form of an equalization fund. In 1927 the appropriation for this purpose was $3,250,000 and 90 of the 100 counties participated. In 1929 the appropriation was increased to $5,250,000 and 94 counties participated. Moreover, an additional appropriation of $1,250,000 was apportioned to districts which were supporting extended terms (usually two additional months).

There was a determined effort made in the recent legislature to secure full state support of the constitutional term (six months) and without resorting to the use of a property tax. It was proposed by the advocates of this plan to raise the major part of the additional revenue needed from a sales tax of one form or another. The opponents of the sales tax were successful in resisting that form of tax, and the anti-ad valorem group accepted a compromise measure by which the state assumes the current expenses of the six-month term but is permitted to levy a property tax of 15 cents on $100 of assessed value. Since the aggregate value of all property in 1930 was slightly under three billion dollars, the property tax yield will be less than $4,500,000. The appropriation for the support of the six-month term is $16,500,000 and the appropriation toward the support of the extended term $1,500,000. Thus school support from other than property taxes is increased from $6,500,000 to $13,500,000. The $7,000,000 of additional revenue is to be raised from increased income, franchise, and business taxes.

This legislation is significant both because it represents a decided shift from property to other forms of taxation, and because it is a pronounced step toward centralization. For the operation of the minimum school term the state becomes the unit of administration. Every teacher, janitor, and truck driver becomes an employee of the state. All supplies are to be pur-

chased by the state central purchasing agency, also a creation of the 1931 legislature. All remaining one- and two-teacher schools are to be consolidated into larger ones as soon as possible, the state highway department being instructed to give special attention to the improvement of highways over which school buses are routed.

It should be pointed out that school districts and school boards are not abolished by this act. The counties or districts are still responsible for the cost of constructing and repairing school buildings, the liquidation of school debt, and most of the support of terms in excess of six months. These items will require levies aggregating not less than $14,000,000 a year, and more if the state insists on the prompt completion of the consolidation programs. For the next year or two, however, the state will be bearing 56 per cent of the cost of the schools and 42 per cent from other than property taxes.

REDUCED PROPERTY TAXES

It is estimated that the road and school legislation alone will reduce the average tax on property 47 cents per $100 of assessed value. The weighted average rate on rural property in 1929 was $1.58, hence the reduction promised is almost a third. This is ignoring the savings that will be effected in the cost of caring for prisoners. It also ignores the savings that will accrue through better financing as a result of the creation of the local government finance commission. The duties and powers of this agency were described in the June issue of the REVIEW. It is required to pass on all bond or note issues and, if it can sanction, to negotiate the sale.

The reader may be wondering why the county tax rates are to remain as high as indicated above with no road levies and with school levies so greatly reduced. The explanation is debt. On June 30, 1929 the counties and subsidiary districts, exclusive of cities, had a bonded debt of $201,000,000. Retirements in the last two years have probably not exceeded new issues. During the next ten years the average levy for debt service alone will have to be 54 cents. Were it not for this item the rural taxpayers could anticipate a very moderate tax rate.

Another question that may arise in the mind of the reader is whether this extreme centralization is desirable. No attempt will be made in this article to answer that question. It may be stated, however, that the citizens of the state have not resisted the movement. Apparently they are more interested in tax relief than in preserving the rights and prerogatives of local self-government. It is almost certain, however, that there will be a reaction. In fact, certain politicians have already started to make capital out of the situation.

RECENT BOOKS REVIEWED

MUNICIPAL EXPENDITURES. By Mabel L. Walker. Baltimore: The Johns Hopkins Press, 1930. 198 pp. $2.25.

Within recent years many political scientists, governmental researchers, and public officials have been seeking certain objective standards by means of which the services furnished by the government of one city can be compared with those of another. It is to the formulation of a composite of these standards for rating city government as a whole that Miss Walker has devoted herself in *Municipal Expenditures.*

Two types of standards are proposed in this treatise. The first is an inquiry into the stress accorded the several functions of the government and is largely based upon the proportion of the city budget which is applied to each function. In the second type, certain criteria are adopted for the various city activities and a large number of cities graded accordingly.

The findings in this book are interesting, but not convincing. On page 8, a comparison is made between the proportionate amount of the budget spent in this country and in England for ten different functions of government. Although the accuracy of the comparisons between the figures of each country are qualified in the text, the specific activities within each of the functions in the one country vary so materially from those in the other that I believe this sort of comparison entirely misleading. For instance, health in England receives 24.2 per cent of the budget whereas in this country it receives 2.3 per cent. The text does not remind us, however, that health work in England includes all types of sanitation work and some varieties of public welfare work which fall under other functions in the United States figures. Similarly, in education the relatively small amount spent in England on this item does not necessarily mean, as the author points out, that education may be very much less stressed in England. It is a matter of common knowledge that education in England has been traditionally a private rather than a public matter.

Moreover, I suspect that the figures for police and fire protection in this country (20.6 per cent) and England (7.7 per cent) are not at all comparable. The expenditures for fire protection in England are extremely small due to less hazardous construction. On the other hand, I would believe that the English police costs are relatively quite high because the number of policemen per capita in English cities is much greater than in this country. Perhaps the aid by the Home Office amounting to half of city police budgets has not been included.

Nor does it follow that in cities in this country certain activities are less important than others because less money is spent for them. For instance, the figures quoted on page 139 showing that 10 per cent of the budget in 1928 went to police, 8 per cent to fire, 2 per cent to health, 37 per cent to schools, etc., does not mean that these functions vary in importance in this proportion.

Moreover, the fact that the proportion of expenses budgeted to a function by cities has increased or decreased over a long period of years does not necessarily mean that the activity is becoming more or less important. It might just as well show, and I believe it does, that urban conditions have been undergoing change and that this change calls for more or less expenditures in respect to the various city functions. Even though American cities may have spent 7.7 per cent of the budget for fire protection in 1928 as compared with 10.5 per cent in 1905, this does not mean that fire protection is any less important now than formerly.

The author, however, appreciates that far more than this comparison of expenditures is needed in judging municipal governments and proceeds to set up certain criteria for a number of city activities by means of which she grades 160 cities. It is at this point that the book really gets down to business, and it is likewise at this point that the author runs into blind alleys.

In selecting the functions or activities which are to be subjected to these tests, the author sets forth the following requirements:

First, they must be generally accepted as municipal responsibilities; second, they must be capable of quantitative measurements; and third, statistics for them must be available in terms of results rather than methods or costs.

These are all logical but the third requirement warrants further interpretation. It seems to me that this requirement falls into the following two parts:

(1) Statistics in terms of work done. These include an enumeration of the various types of work or methods which in itself furnishes a rather substantial index in some activities as to the results. For instance, if in a certain city, twenty miles of streets are cleaned daily by flushing and supplemented by hand brooming; forty miles cleaned daily by alternating flushing and motor pickup sweeping along, we know rather closely what sort of street cleaning service that city is receiving; for the results of each of these methods are pretty well standardized. However, the streets in another city receiving the same cleaning schedule may not be so clean day in and day out, due to such local conditions as type of pavement, character of refuse on streets, weather and topographical conditions, character of industry and population, and most of all the habits of the citizens. With this illustration in mind, the author's use of "number of times per week" as the test of street cleaning service can be seen as exceedingly superficial to say the least.

(2) Statistics in terms of results and costs. Certainly costs cannot be separated from results in such activities as street construction, garbage removal, street cleaning, etc. For instance, if in the street cleaning example cited above it costs one city half again as much to flush a mile of streets under identical conditions as another we certainly have some sort of an index of the service the cities are furnishing. Moreover, in most activities the measurement or the quality of the service or results is a rather intangible task. This type of measure is controlled to a marked degree by the public through its insistence or its willingness to pay, by the official in charge of the work, and by the trained critic or expert. With such a varied group of judges each having different prejudices and interests an agreement upon a standard of results or service is seldom if ever obtainable.

In order that the author may have simple measures which can be applied easily in statistical form, she refers briefly to some of these complicating factors and then proceeds with the task of grading cities. But most of the criteria adopted by the author reflect a few isolated conditions rather than measure the quality of services furnished by the city government. Perhaps the great need for a general index of city efficiency warrants the formulation of these proposals, sketchy as they may be, and in advancing this end the book is a contribution.

Although the value of the ratings are qualified in the text, the author continually assumes that the results are valid. I regret that I cannot join in her enthusiasm. A tremendous amount of water must flow over the research dam before such simple criteria as Miss Walker employs can be applied with much significance. In fact, I am not certain that it will ever be possible to set up such simple measures and by means of arbitrary ratings provide an efficiency index, so to speak, of a city as a whole.

I can agree, however, that "this study," as the author states, "has sought to emphasize the value of the comparative method in city administration," and that "the most important yardstick for any American city is the yardstick of other cities." Let us, therefore, direct our energies to establishing a nation-wide and uniform system of reporting the amount of work done under each city activity, the methods employed, its cost, and the various factors which affect the work in a particular city; and gradually through the use of this information arrive at certain measures or standards which will supply an index not only of the service which is done but of the qualities of the results.

DONALD C. STONE.

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HOW MANCHESTER IS MANAGED—A Record of Municipal Activity. Edited by B. Leech. Manchester City Council, Manchester, England, 1930. 244 pp. 6d.

The British City is ostensibly governed by a large, popularly elected council subdivided into committees for administrative purposes. Roughly speaking, each committee is responsible for a department or function of city government. Associated with each committee are one or more permanent officials or civil servants in immediate charge of the work.

The report *How Manchester is Governed* purports to be of the Manchester City Council. In reality it is made up largely of the achievements and plans of its permanent officials.

Running as it does to more than two hundred pages and dealing fairly fully with the several departments, the report is reminiscent of those of American cities prior to an attempt at their popularization. There is the same absence of the devices of display and emphasis, the same multiplicity of detail with the frequent consequent failure to distinguish between matters of greater and lesser importance in the mind of the reader. Yet there are certain subtle differences from the average American report. There is an almost total absence of glittering generality and bombast. Party lines are not even mentioned,

although they exist in the composition and organization of the council.

The achievements pictured in the report are interesting. It is at once evident that municipal activity has expanded along what we in this country would call "socialistic" lines further than in any American cities. Not only are the ordinary utilities—electricity, street cars, gas, water—municipally owned but the city in common with British cities generally is now responsible for most of the new housing construction. It is difficult for Americans to visualize the crusading spirit with which a British city attacks its slums, clears away old dwellings, and builds either model tenements or garden city suburbs.

Yet perhaps the most noticeable feature of the entire report lies not in anything tacitly stated but in certain underlying assumptions. Local self-government as the English use the term implies the active participation of the citizens themselves in their government—not, as in America, a freedom from central interference. This local self-government in the British sense is outstanding. There are over one hundred fifty elected and coöperated members of the council and its committees. Not one of these receives any salary. Most of these men are quite ordinary, a few are very capable. Practically all of them approach their committee work with a sense of responsibility.

Ernest S. Griffith.

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The Fiscal Problem in Missouri. By the National Industrial Conference Board, Inc., New York, 1930. 359 pp.

This survey of fiscal conditions in the state of Missouri was undertaken by the National Industrial Conference Board at the request of the Associated Industries of Missouri. The report was prepared ostensibly in anticipation of the 1931 legislative assembly which was destined to take some action upon the state's fiscal problems. The findings of the report relate mainly to the expenditures of the state and local governments; state and local indebtedness; the tax system and its administration, particularly the administration of the general property tax; state and local tax revenues; the farm tax problem; public school finance; financing the capital requirements of the state; problems of tax burden; possible sources of additional revenue. The report presents not only facts and figures but also treats critically both the present system of tax administration and particularly the plans proposed by the recent state survey commission for the financing of the public schools and the capital requirements of the state penal, eleemosynary, and educational institutions.

The criticisms of the system of tax administration are justified. Experts would be inclined to disagree, however, upon the advisability of a bond issue for capital requirements as recommended in the report in preference to the pay-as-we-go policy recommended by the state survey commission. A considerable part of the criticism of the finance program for the public schools recommended by the survey commission does not furnish convincing evidence that the proposed plan will prove deficient in practice. The criticism also fails to take into consideration sufficiently the intricacies of the problem and the political exigencies which must temper any program of state financing of local schools. Consolidation of local schools may result from the survey commission's program. The process of consolidation and redistricting is not so impossible under this program as the Conference Board report would lead us to believe.

The report relies mainly on prior surveys and earlier studies, and, therefore, does not throw any additional light upon the state's fiscal problems. For example, in such a subject as relative tax burdens there is need for a thorough and exhaustive study. The chapter on this subject in the report is very inadequate. The report is useful and valuable for the information it brings together on fiscal matters and the point of view it develops on the state's fiscal problems.

Martin L. Faust.

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The Personnel Classification Board. By Paul V. Betters. Institute for Governmental Research, The Brookings Institution, Washington, D. C. 1931. 160 pp. $1.50.

For the maintenance of its nation of 120,000,000 people who have widely divergent interests and who engage in widely divergent activities, the United States government employs a force of civil servants five times greater than its standing army. They number over 600,000 and they are placed in more than 450,000 different positions. These positions, which embrace every conceivable type of occupation from accountant to zoölogist, form a vast and complicated organization. They comprise a piece of administrative machinery, which, if the health and happiness of the nation are to be ensured, must not clog.

The personnel classification board, which was created by an act of congress in 1923, is faced with the difficult task of standardizing and classifying these many positions. The Institute for Government Research of the Brookings Institution has just published a study of this board, issued as one of its series of invaluable monographs on the government service and ably prepared by Paul V. Betters.

The organization of the personnel classification board as an independent establishment, responsible solely to the President of the United States, is the culmination of a century-old effort to equalize compensation and standardize positions. The board consists of three members —the director of the bureau of the budget, a member of the United States civil service commission, and the chief of the bureau of efficiency, all of whom serve in an ex-officio capacity. It maintains a staff of 62 permanent employees under the guidance of a director of classification. Its functions can be roughly classified under the following heads: (1) Classification of Positions; (2) Review and Revision of Efficiency Rating Systems; (3) Study of Compensation Rates; (4) Conduct of Survey of Field Service.

This new monograph of the Brookings Institution is an invaluable addition to its other studies of our federal governmental departments and agencies.

H. Eliot Kaplan.

Zoning in the United States. The Annals of the American Academy of Political and Social Science, May, 1931, Part II. 230 pp.

One of the newest branches of city planning, zoning has rapidly reached an authoritative stage. The present document gives evidence of the strength and breadth of the movement. But to the present reviewer its most interesting articles are those dealing with the further application of the zoning idea to embrace county zoning and even state zoning, the integration of zoning with the designing of the city plan, the many advances in technique and scope noted in several articles, and last but not least the note of warning sounded against destructive practices by ill-advised officials.

The value of the document is greatly enhanced by the inclusion of a classified reference list of over one hundred and fifty selected titles, many of them very recent, compiled by the librarian of the Harvard Landscape Architecture and City Planning Library.

A decade ago it would have been difficult if not impossible to have assembled twenty-six adequately qualified contributors to such a symposium of zoning. It was noteworthy that the editor, himself a Californian, was able to secure over half the contributed articles from Californians.

Arthur C. Comey.

Kansas City Health and Hospital Survey. By W. F. Walker, Dr. P.H. and associates. Kansas City, Missouri, Chamber of Commerce, 1931. 329 pp.

Under the auspices of the committee on administrative practice of the American Public Health Association, public health surveys have been made during the past seven years in 42 cities, 33 rural areas, and 4 states. This appraisal of health facilities and their administration in Kansas City, the latest of the series to be published, maintains the high standard which has characterized all of these surveys. Like all of the others, it is virtually a text book on modern public health procedure.

This report answers the questions as to whether public health and hospital activities in this city of 400,000 are adequate, whether expenditures are sufficient, whether the operation of public health work is efficacious, and what are the immediate and future needs. As frequently occurs when civil activities are scrutinized by experts, the public health facilities were found to be only about 70 per cent adequate, expenditures too low, and leadership coming from the voluntary health groups instead of the official agencies.

Adoption of the recommendations in efficient health surveys such as this ought to do much to raise the standards of public health practice in this country. The American Public Health Association is making a notable contribution through these investigations, which must be consulted in their entirety to be fully appreciated.

James A. Tobey, Dr.P.H.

REPORTS AND PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

Procedure under the California Subdivision Map Act with Particular Reference to County Planning.—Hugh R. Pomeroy. Los Angeles Chamber of Commerce, 1931. 34 pp. Mr. Pomeroy, as an adviser to city and county planning boards, has had experience with subdivision legislation. The first law required the filing of a map of the subdivided area. The present law enacted in 1929 sets up complete procedure for laying out subdivisions and makes a planning commission almost an essential factor in the acceptance of such new development map by the municipality. Subdivision becomes a community concern rather than a marketing method. The procedure by which this is effected is the subject of this study, which was published through the courtesy of the Real Estate and Civic Devlopment Departments of the Chamber of Commerce. (Apply to Civic Development Department, Chamber of Commerce, Los Angeles, California.)

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Philadelphia Traffic Survey.—Mitten Management, Inc., 1931. 23 pp. The seventh of the series of traffic studies conducted by Mitten Management in coöperation with the Chamber of Commerce completes the survey of Philadelphia. The traffic characteristics of South Philadelphia are described, regulatory measures are suggested and a system of main traffic arteries recommended. (Apply to Mitten Management, Inc., Philadelphia, Pennsylvania.)

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First Biennial Report of the State Auditor and Efficiency Expert of Texas.—Austin, 1931. 5 volumes. 956 pp. Moore Lynn, on the basis of a thorough survey of the general organization as well as the finances of the state, has submitted this elaborate report to the 1931 legislature with recommendations for immediate action. (Apply to State Auditor and Efficiency Expert, Austin, Texas.)

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Financing Public Improvements and Suggestions for Ten-Year Improvement Program for the Territory of Hawaii.—Hawaii Bureau of Municipal Research, 1931. 201 pp. The senate of the Territory of Hawaii requested this study and the bureau had the assistance of a number of committees of officials and others in preparing the program of improvements. Various types of public development are included in the program, schools, highways, hospitals, airports, water works, harbors, courthouses, public office buildings, sewers and others. As an important factor in achieving the program the report deals extensively with plans for financing it. This is made complete by giving the history of public loans in Hawaii, the practices followed on the mainland, the laws and legal opinions governing public financing, the financial status of the various authorities undertaking improvements. Data are submitted on the possible methods of securing the funds necessary, for this proposed expenditure of thirty million dollars in ten years. The material so comprehensively covered in this report justifies its bulk. The measures have been submitted to the territorial legislature for their action. (Apply to Hawaii Bureau of Governmental Research, Honolulu, Territory of Hawaii.)

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Proceedings of the Twenty-Fifth Convention of the Union of Nova Scotia Municipalities.—1931. 99 pp. In August of 1930 almost 200 delegates gathered at Truro to hear and take part in discussion of education, finance, agriculture, manufacturing, tax collection, railway payments in lieu of taxation, superannuation funds, hospital charges, and other subjects of municipal interest. (Apply to Arthur Roberts, K. C., Union of Nova Scotia Municipalities, Bridgewater, Nova Scotia.)

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Appropriation Items of Illinois Cities and Villages.—Illinois Municipal League, 1931. 31 pp. Fifty-six cities in Illinois sent to the League office finance material which has been compiled in four population groups. The population range from 475 to 105,000, and budgets from less than $1800 to $2,473,620. The budgets of these municipalities are given briefly with assessed valuation, estimated revenue from different sources and estimated expenditure. (Apply to Illinois Municipal League, Urbana, Illinois.)

Yearbook, 1929, Department of Health.—Commonwealth of Pennsylvania, 1930. 198 pp. This is the first time the state health department has published a report of this type. The result is a comprehensive but concise story of the work done and the health conditions of the state in vital statistics, communicable diseases, sanitary engineering, milk control, child health, nursing laboratories, public health education, narcotic drug control, inspection, sanatoria and clinics. The book includes also a financial statement on health work. (Apply to Theodore B. Appel, M.D., Pennsylvania Department of Health, Harrisburg, Pennsylvania.)

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City Planning and Related Laws in 1930.—Lester G. Chase. Washington, D. C., 1931. 46 pp. A number of changes in planning legislation during 1930 emphasize the growing conviction that orderly and controlled development is both economical and practical. Thirty-one states, the District of Columbia and the Territory of Hawaii have city planning enabling acts of some sort. The type of legislation is listed in this report. Many laws are based on the "Standard City Planning Enabling Act" of the bureau of standards and cover the general field of (1) making the city plan and organizing the city planning commission, (2) controlling new areas, (3) controlling buildings in mapped areas, (4) regional planning organization. The legislation passed is usefully indexed by state and subject matter. (Apply to Division of Building and Housing, Bureau of Standards, Department of Commerce, Washington, D. C.)

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Recreation, Civic Center and Regional Plan of Riverside, California.—Charles H. Cheney, Consultant. 47 pp. This serves as an inventory of Riverside's assets and points out lines of future development for a playground, school and recreation system, park and parkway projects, civic center and public building groups, and the embellishment and increase of the amenities of life. It includes also a short chapter on the regional or county plan, an index, maps and illustrations. (Apply Charles H. Cheney, City Planning Commission, Riverside, California.)

Second Annual Report of the Regional Plan Association, Inc.—New York, 1931. 20 pp. President George McAneny and Secretary Wayne D. Heydecker at the second annual meeting of the members of the Association report real progress in the development of the plan. Not only has public understanding and support been won, but a review of public works under way or proposed reveals a general and progressive development throughout the metropolitan area which is in harmony with the Plan. The report describes briefly how throughout the fifty mile radius from New York City this studied development is taking place. (Apply to Regional Plan Association, Inc., 400 Madison Avenue, New York City.)

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Survey of Zoning Laws and Ordinances Adopted during 1930. Zoned Municipalities in the United States.—Norman L. Knauss. Washington, D. C., 1931. 24 pp. 39 pp. The seventy-seven areas which adopted zoning regulations in 1930 brought the total to 981, including 67 per cent of the urban population of the United States, with 82 cities over 100,000 in population and 44 municipalities under 1,000. The first bulletin describes and indexes the 1930 legislation, with a special section on the regulation of land uses in areas adjoining airports. The second bulletin lists the zoned municipalities by states and gives the population, year of adoption and amendment, and describes the type of ordinance in use. (Apply to Division of Building and Housing, Bureau of Standards, Department of Commerce, Washington, D. C.)

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Building Code and Plumbing Code Tabulation.—Bureau of Standards, Washington, D. C., 1931. 42 pp. This tabulation gives the list of cities of over 5,000 population which have building and plumbing codes, the dates of adoption of the present code, the principal recent changes and whether or not the code is now being revised. It is expected that the cities now working on changes or contemplating such may communicate with others having like problems, for the interchange of experience in the development of safe and economical codes. (Apply to Building Code Committee, Bureau of Standards, Department of Commerce, Washington, D. C.)

JUDICIAL DECISIONS

EDITED BY C. W. TOOKE

Professor of Law, New York University

Power of Zoning Boards of Appeals to Grant Variations.—Friends of zoning legislation will note with some regret the decision of the Supreme Court of Illinois in the case of *Welton* v. *Hamilton* 344 Ill. 82, 176 N. E. 333 (April 23, 1931). The zoning law of Illinois (1921/3) provides for a board of appeals with power to determine and vary the application of zoning regulations in harmony with their general purpose and intent and in accordance with general or specific rules contained in the regulations. "Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the ordinance the board of appeals shall have the power in passing upon appeals to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done."

This power of variation, which is a familiar feature of zoning legislation, the court holds to be an invalid delegation of power because it provides no rule or standard for the guidance of the board other than its own uncontrolled discretion.

It is interesting to note that the power of variation was originally devised as a safety valve to give owners aggrieved by the zoning of their property a chance to obtain relief upon the basis of the law itself without attacking its unconstitutionality; a purpose which for a number of years was accomplished in New York (See Proceedings National City Planning Conference 1925, p. 118); and that in Illinois it is now the power that is declared unconstitutional, while the general principle of zoning legislation itself has been sustained (*Aurora* v. *Burns*, 319 Ill. 84, 149 N. E. 784).

That an administrative power to vary a statute presents constitutional difficulties cannot be denied. Do those difficulties apply equally where an ordinance is to be varied, and not a statute? The Supreme Court of Illinois does not discuss the difference, treating the problem merely as one of the relation of legislation to administration, and of the delegation of an unregulated discretion in the application of the law.

Decisions in Hopeless Confusion

Every student of the subject knows that the American decisions concerning the validity of unregulated administrative discretion are in hopeless confusion; in Illinois it is difficult even to reconcile the decisions of the Supreme Court of the state. In dealing with so difficult a matter as the delegation of power, courts can hardly avoid operating with phrases that cannot stand close analysis; but one wonders whether the Supreme Court itself understands the meaning of what it declares to be the basic distinction: "The true distinction is between a delegation of power to make the law, which involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no objection can be made."

To the writer this has always seemed to be a distinction without a difference; but in view of the elusiveness of the criterion, it is not surprising that the court easily persuades itself that all its decisions sustaining delegated discretion fall on one side of the distinction, and all its decisions against the validity of the delegation, on the other.

Unlike other laws, a zoning ordinance is not an expression of abstract principle, but a concrete arrangement with a very vague statement of principle merely as a background. As regards the principle, any delegation would necessarily bear only on application; as regards the concrete plan, a delegated power to vary cannot be otherwise than a departure from a strict rule of non-delegability. But it begs the question to say that a delegation of this character is unconstitutional. It should be remembered that in the establishment of a concrete plan, the two categories legislation and administration blend into each other, that the analogies of abstract legislation operate only imperfectly, that any concrete plan

imperatively calls for occasional variation, and that it is practically impossible to state or define in advance with absolute exhaustiveness what specific circumstances or conditions constitute practical difficulties and unnecessary hardship.

While the case is disposed of entirely on grounds of constitutional invalidity, the court, in the course of the opinion makes the following significant statement: "In this particular case the board of appeals did not make any attempt to state what the difficulty or hardship was in the way of carrying out the strict letter of the ordinance or in what respect the spirit of the zoning ordinance might be observed, the public safety or welfare secured and substantial justice done by the erection of the proposed building. The board simply made the general finding that there is unnecessary hardship, etc., and ordered the issue of the permit, and the only thing decided is that the board of appeals thought a permit ought to issue in this case in accordance with the plans submitted and in violation of the express provisions of the ordinance but with no indication of the reasons why."

It appears from this, that by the application of general principles of administrative law, the court should have been able to reverse the decision of the board of appeals upon the board's own record or lack of record, applying the general rule that when a board has power to make a determination, upon a hearing, there must be record evidence sufficient to substantiate the decisions reached. Plainly the decision of the board could not stand this test. This more conservative method of dealing with the case would also have made the discretion of the board appear as one judicially controllable as to its exercise; and the delegation of such a discretion, being a valuable and indispensable adjunct to the necessarily complex provisions of modern regulative legislation, should not lightly be held to be invalid.

ARBITRARY POWER AND ARBITRARY EXERCISE CONFUSED

When the court says, "The mere fact that the owner of a particular parcel of property in a certain district, acquired long after it was classified under the zoning ordinance, can make more money out of it if permitted to disregard the ordinance instead of required to comply with it is neither a difficulty nor a hardship authorizing the board of appeals to permit such owner to disregard the ordinance so far as it interferes with his plans for a more profitable use," it states a sound proposition; but when it adds "and the Legislature was without power to authorize an administrative board to grant such permission," it may well be suggested that the legislature never did grant such permission.

Is it not true that the court declared a power invalid because it was arbitrarily exercised when it might have struck down the arbitrary exercise, and saved the power with a view to its legitimate application?

What is the effect of the decision? The varying power of the board of appeals is gone, but the power of the city council to amend the zoning ordinance must remain, since it is indispensable. An amendment by the council may be as arbitrary as a variation by the board of appeals. A court of equity can grant relief against an arbitrary amendment; and it does so, not by declaring its exercise illegal (*Phipps* v. *Chicago*, 339 Ill. 315)—precisely what the court should have done in the present case.

REVISED ORDINANCE MAY SAVE BOARD OF APPEALS

Even subject to a judicial check on general equitable principles, the power of amendment vested in the council is in its intrinsic guaranties of conservative and fair exercise hardly superior, if indeed it is equal, to an administrative power of variation. Or rather, the amending power is equally capable of abuse, if there are no better safeguards than those hitherto found in the amending process. Legislation, even if controlled by a judicial veto power, can hardly rival in effectiveness a semi-judicial administrative procedure. The question, then remains whether the benefits of such a procedure cannot be saved even under the decision in *Welton* v. *Hamilton*.

The zoning ordinance in force when *Welton* v. *Hamilton* was decided dealt very briefly with the subjects of the board of appeals and of amendments, prescribing no safeguards for the board procedure, and only the most meagre safeguards for the amending process. The original zoning ordinance of April 5, 1923, had been very different in this respect. Section 29, entitled "Functions of the Board of Appeals," had prescribed for variations a recommendation by the board based upon a hearing, and carried into effect by an amending ordinance, and had specified seventeen different grounds for variation. It does not appear why this conservative procedure was subsequently discarded. But at the time this

note is being written, there is pending before the council a proposition to reinstate the provisions of the former ordinance in substantially the original form (See Council Proceedings of July 20, 1931,) and the proposition will undoubtedly be adopted.[1] The decision in *Welton* v. *Hamilton* will thus at least have the beneficial effect that a less satisfactory will be replaced by a more satisfactory procedure. The delegation declared unconstitutional will disappear; the varying power vested in the council is not only not a further delegation of power, but it is also not a power left without guiding standards; the constitutional objections that were found fatal in *Welton* v. *Hamilton* appear to have no application to the proposed reënactment of the original law.

It is true that the safeguards proposed to be reinstated are based upon ordinance only, and not on statutory requirement; but the Supreme Court of Illinois has recently held that the city council is bound by its own requirements, and that an ordinance passed in contravention of such requirements is invalid. (*Cain* v. *Lyddon*, 343 Ill. 217, 175 N. E. 391.)

It is to be hoped that under the new dispensation it will be found possible to handle the difficult problem of variation with such measure of fairness and impartiality as can be expected under the limitations of human imperfection.

ERNST FREUND.

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Zoning—Necessity for Definite Standards in Imposing Restrictions Upon the Character or Use of Property.—In connection with the able discussion of *Welton* v. *Hamilton* by Dr. Freund, attention may be called to the recent decision of the Supreme Court of Pennsylvania in *Taylor* v. *Moore*, 154 Atl. 799, which deals with the effect of providing suitable administrative machinery, with an opportunity for appeal, upon the right of one aggrieved by zoning regulations to raise the constitutional question in other actions. The plaintiff sought by mandamus to compel the building inspector of the borough of Beaver to grant him a permit to build a gasoline service station on his property. His application had been refused by the inspector and the board of adjustment, but he had not availed himself of his statutory remedy of appeal to the court of common pleas. The defendant contended that the plaintiff was precluded to raise the question of his constitutional rights until he had exhausted his statutory remedy.

[1] The ordinance has since been adopted.

The court held that the relator is confined to his statutory remedy in all cases except those where officials act without authority or without power, and directed that the mandamus proceedings be transferred to the court of common pleas and docketed as an appeal from the order of the board of adjustment. But the court points out that upon such appeal the constitutional question may be raised and that following the statutory remedy in no way amounts to an acknowledgment of the validity of the zoning ordinances or of the proceedings taken thereunder. After calling attention to the vagueness of delimitation of the districts zoned and the lack of any definite standards upon which to base a determination of compliance with the restrictions, the court proceeds to state the principle as follows:

> When an act directs that an ordinance thereunder shall prescribe suitable rules and regulations intended to accomplish the operation and enforcement of the law in accordance with the express legislative will, the ordinance must prescribe some suitable standard by which the action of the board should be governed. Where a zoning ordinance permits officials to grant or refuse permits without the guidance of any standard, but according to their own ideas, it does not afford equal protection. It does not attempt to treat all persons or property alike as required by the Zoning Act. While the exercise of discretion and judgment is to a certain extent necessary for the proper administration of zoning ordinances, this is so only where some standard or basis is fixed by which such discretion and judgment may be exercised by the board. Where a zoning ordinance is vague and indefinite, it cannot be sustained as valid under the authorizing act.

It may be noticed that both of these decisions give a severe blow to the idea permeating many of our zoning ordinances that constitutional property rights may be properly protected by the amplification of administrative machinery. Boards of zoning appeals in many cities have come to believe that under the broad standards laid down by general zoning ordinances the discretion committed to them may be exercised arbitrarily, so long as they observe the requirements of notice and hearing. Whether or not the courts of a given state hold such undefined administrative processes to be constitutional, practical experience proves the necessity for more specific and definite standards to insure to property owners the equal protection of the law.

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Officers—Removal for Cause—Limitations upon Governor's Power in Virginia.—By a vote of four to three, the Supreme Court of Virginia

in the recent case of *Fugate* v. *Weston*, 157 S. E. 736, has declared unconstitutional section 266 of the Tax Code vesting in the governor the power to summarily remove a county or city treasurer for malfeasance in office. The ground of the court's decision is that the removal of an officer for cause is a judicial function, requiring notice and hearing, and cannot be delegated to the executive under the sections of the constitution providing for a separation of the powers of government. The several opinions in this case are an important contribution to our law of a motion of public officers and the case will take a place with other leading cases on this point. The power of removal is generally incident to the power of appointment (*Richards* v. *Clarksburg*, 30 W. Va. 491, 4 S. E. 774; *Myers* v. *United States*, 272 U. S. 52), and in some states the constitution commits to the governor the power to remove locally elective officers (*In re Guden*, 171 N. Y. 531, 64 N. E. 451).

Under this decision the general assembly cannot vest in the governor any power of removal of local officers, although in Virginia the principal legislative and executive officers of cities are held to be state officers (*Lambert* v. *Barrett*, 115 Va. 136, 78 S. E. 586). Section 120 of the state constitution, however, expressly authorizes the general assembly to vest the powers of suspension and removal of subordinate municipal officers in the mayor. It is also to be noted that section 2705 of the Code provides for removal of all state, county, city and town officers by a somewhat summary judicial process. Nevertheless, it seems unfortunate that section 266 of the Tax Code, which has been on the statute books since 1887, should be eliminated. Control by judicial process in cases of defalcation or other delinquencies is often too slow to be effective. The power of summary suspension or removal by the governor has been found in other states to be a valuable check upon official misconduct. It will be interesting to follow what action will be taken by the people of Virginia to meet this situation, whether by an amendment to the constitution or by the adoption of some kind of administrative control over fiscal officers that will insure the public against their derelictions.

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Parks and Playgrounds—Liability for Maintenance of Nuisance.—The application of the doctrine of immunity of municipal corporations in tort for the acts of their officers and employees when in the performance of so-called "governmental functions" has been distinctly modified in the past few years, both by the tendency of the courts to extend the sphere of "proprietary functions" and the recognition of liability in all instances where the activity of the municipality is revenue-producing or where it results in a positive trespass upon real property or in the creation of a nuisance. Those courts which have not yet extended the nuisance theory to predicate liability in tort where the activity is classified as governmental, may grant equitable relief against its continuance (*Hennessy* v. *Boston*, 265 Mass. 559, 184 N. E. 470), but refuse to hold a municipality liable for injuries due to the negligence of its officers or agents.

A marked tendency is apparent to predicate liability in all cases where the maintenance of a nuisance, authorized or permitted to exist on municipal property, is shown to be the cause of the injury. The courts of Connecticut have consistently held that in the maintenance of parks and playgrounds, a city is performing a governmental function, but in its recent decision in *Hoffman* v. *City of Bristol*, 155 Atl. 499, the Supreme Court of that state has taken the advanced ground that a municipality is to be held liable in all cases where the injury complained of is the result of a nuisance existing in a park or playground. The plaintiff in this case was injured at a free bathing beach by jumping off a diving board maintained by the city. The water was so shallow as to make diving hazardous and no proper warning of the dangerous surroundings was given.

The test of liability in tort based upon nuisance is thus defined by the Court of Appeals of New York in *Melker* v. *New York*, 190 N. Y. 481, 83 N. E. 565:

> If the natural tendency of the act complained of is to create danger and inflict injury upon person or property, it may properly be found a nuisance as a matter of fact; but, if the act in its inherent nature is so hazardous as to make the danger extreme and serious injury so probable as to be almost a certainty, it should be held a nuisance as a matter of law.

This is the test now adopted by the Connecticut courts. It is no longer of practical significance in New York in situations similar to that of the instant case, as the courts of that state have adopted the rule that the maintenance of parks whether by a city, a county or a town is, for the purpose of determining liability in tort, to be regarded as a proprietary and not as a governmental function (*Augustine* v. *Town of Brant*,

249 N. Y. 198, 163 N. E. 732); and that the municipality is liable for the negligent acts of its officers and employees in performing this function. The Connecticut courts had recently made an exception to its rule of non-liability in cases where a substantial revenue is derived from the lease of park privileges (*Carter* v. *City of Norwalk*, 108 Conn. 697, 145 Atl. 158). The next logical step would be to recognize in the extension of modern park and playground activities a sufficient warrant for holding that in providing these forms of recreation a city is acting primarily for the convenience and pleasure of the people of the locality and is performing a local function for which it should be held accountable upon the same basis as a private proprietor.

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Nuisance—Pollution of Tidal Waters by New York City.—The United States Supreme Court on May 18, 1931, decided that New York City must cease its long-established practice of dumping its garbage into the Atlantic Ocean (*State of New Jersey* v. *City of New York*, 283 U. S. 473, 51 Sup. Ct. Rep. 519 [Adv.], 75 L. ed. 740 [Adv.]). The city contended that the Court was without jurisdiction, as the garbage was dumped beyond the three-mile limit and without the territorial jurisdiction of the United States. The findings of the special master, appointed by the Court to hear the evidence, showed that at certain times during the year the garbage thus deposited was carried into the territorial waters of New Jersey, causing great loss to the fishing industry and the summer resort business, lowering property values and constituting a menace to the public health. In approving the master's report, the Court held that under these circumstances the dumping of garbage into the high seas was a nuisance which the Court had jurisdiction to abate, and that the state of New Jersey was entitled to an injunction. The Court ordered the master to conduct further hearings in order to fix a reasonable time in which the city would be able to devise and construct other means of disposing of its garbage, and with all convenient speed to report his findings and a form of final decree. These hearings have now been concluded, briefs have been submitted, and the master's additional findings are expected to be submitted early in September.

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Streets and Highways—Condemnation of the Fee for Highway Purposes.—The question whether under the provisions of the constitution of the state, the legislature may authorize the condemnation of more than the necessary easement for travel has recently been before the courts of New Jersey. The Supreme Court in the cases of *Frelinghuysen* v. *State Highway Commission*, 152 Atl. 80, and in the recent case of *Holcombe* v. *Western Union Telegraph Co.*, 154 Atl. 837, holds that under the constitutional provision that "private property shall not be taken for private use without just compensation," the power is limited to what is absolutely essential for the public use. Both of these cases are now before the Court of Errors and Appeals, and its decision will finally determine the law.

This question is especially important to the public utility corporations, whose franchise rights in the public highways will not be hampered by the rights of abutters if the higher courts hold that the fee is appropriated upon condemnation for highway purposes. In the *Holcombe* case, for example, the liability of the defendant to compensate an abutting owner for poles erected in the highway turns upon the question of the extent of the appropriation. The question is of less importance in those states which give a broader content to the public easement of travel and hold that the erection of telegraph and telephone poles does not impose any additional servitude upon the fee.

It may be noted that the New Jersey legislature in 1930 enacted statutes expressly conferring upon the state highway commission the power to condemn the fee. In New York, where the constitutional power of the legislature to direct or authorize the condemnation of the fee for highway purposes has long been recognized, the Court of Appeals has recently held that under modern conditions a statute giving a state commission the power to condemn the title to real property for highway purposes should be construed to require a condemnation of the fee (*Thompson* v. *Orange & Rockland Electric Co.*, 254 N. Y. 366, 173 N. E. 224). The basis of the construction of the statute adopted in the New York decision is that under present-day conditions no valid distinction can be drawn in this respect between city streets and public highways built under a comprehensive plan of general highway improvement. "Such highways," says the court, "are no longer a matter of merely local consequence." It would seem that similar considerations should be applied to extend the concept of public use in New Jersey, especially since

the legislature has declared the necessity of condemning the fee for state highway purposes.

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Eminent Domain—Trade Fixtures as Real Property under Condemnation Statutes.—In the case of *In re Allen Street and First Avenue*, 256 N. Y. 236, 176 N. E. 377, the Court of Appeals defeated the contention of the city of New York that it had no power to condemn trade fixtures, because under the law of the state they are regarded as personalty, and therefore the city was not liable for an award in condemnation proceedings for their value. Section 970 of the charter confers power to condemn only real property, but section 969 defines real property to include improvements thereto. The majority opinion holds that improvements include trade fixtures removable by the tenant, even though for many purposes they retain the characteristics of personal property.

The general question had been decided in 1907 in the case of *City of New York* (North River Water Front), 118 App. Div. 865, affirmed 189 N. Y. 508, in which it was held that the tenant must be compensated for his unexpired term, and for trade fixtures he had installed even though as between the landlord and tenant they are to be regarded as the personal property of the tenant.

In the instant case, however, it was stipulated between the landlord and the tenant that the lease should terminate *ipso facto* upon condemnation of the fee. The court holds that this fact should make no difference in the result and that in all cases of the condemnation of leased property the city is liable to the tenant for the value of trade fixtures, which are part and parcel of the realty for purposes of condemnation.

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Powers—Expenditure of Money to Advertise Municipality.—In *Loeb* v. *City of Jacksonville*, 134 S. 205, the Supreme Court of Florida holds that an ordinance of the city levying an *ad valorem* tax to create an advertising fund is *ultra vires* and void, on the ground that no express power to expend public moneys for that purpose has been granted by the legislature. The action was brought by a taxpayer for a declaration that the appropriations for the entertainment of the representatives of the Imperial Council of the Ancient Arabic Shrine of North America and of other worthy associations included in the city budget and aggregating $89,980 be declared void. The opinion of the court is based upon sound legal principles, and the action indicates a commendable tendency on the part of the taxpayers to take steps to limit municipal extravagance. The decision is in accord with the well-known case of *State* v. *Cape May* (1901), 66 N. J. L. 544, 49 Atl. 584, which denied that the city had the implied power to advertise its advantages.

It may be noted that in many states statutes expressly give the municipality this power. For example, the New Jersey Home Rule Act of 1917 provides that "every municipality may appropriate funds for the purpose of advertising the advantages of the municipality." Similar grants of power, but restricting the amount that may be appropriated, are found in the New York statutes (Village Law, Section 28; General City Law, Article 2, Section 13b).

In those states where the constitution provides for home rule charters, the city electorate may amend the charter and confer such power upon the municipality. In *Sacramento Chamber of Commerce* v. *Stephens, City Treasurer*, 290 Pac. 728, the Supreme Court of California, on May 7th of this year, held that under a home rule amendment to the city charter providing that the council "may appropriate and spend money from the funds of the city" for the purpose of advertising the city, etc., the council had power to make a contract with the local Chamber of Commerce to entertain foreign visitors and to advertise the city, holding directly that these activities relate to public purposes. On the last point the court cites *Daggett* v. *Colgan*, 92 Cal. 53, 28 Pac. 51, 14 L. R. A. 474, a case relating to the California World's Fair Commission, to this effect: "That what is for the public good and what are public purposes are questions which the legislature must decide upon its own judgment, in respect to which it is vested with a large discretion which cannot be controlled by the courts, except, perhaps, where its action is clearly evasive."

The result of the decisions is that advertising is a public purpose for which the power of taxation can be exercised. But before any tax for this purpose can be levied or money appropriated therefor, the municipality must have an express grant of power either by general statute or by an amendment to its charter. If such power has been granted, the city will have a wide discretion as to the method of its exercise.

PUBLIC UTILITIES

EDITED BY JOHN BAUER

Director, American Public Utilities Bureau

THE SERVICE CHARGE AND ITS DEVELOPMENTS IN NEW YORK

The service charge doctrine has been actively sponsored by the national utility associations, and has obtained the support of most of the engineers who have had to do with rates, particularly those employed by the companies. It has also been avowed by a considerable number of commissioners, who have been almost incessantly bombarded with "scientific" literature and discussion by representatives of the utility organizations. But, in reality, there has been little of real scientific research, little impartial analysis; and the broad public side has received scant consideration.

THE NATURE OF THE SERVICE CHARGE

The service charge consists of a separate charge made for the rendering of service, as distinguished from the delivery of gas or electricity itself. In its direct form, it appears as a fixed sum per month per customer (commonly $1.00) to cover all the costs which are held to be customer costs, such as meter reading, billing, collecting, and similar items which can be more or less directly identified as due to the number of customers and not to gas or electricity delivered.

The service charge idea has been incorporated in the rate structures in so many different forms, that we shall not endeavor to present a detailed description. In its direct form it has met almost general resistance on the part of ordinary domestic consumers; hence, it has been extensively modified, so as to include a small quantity of gas or electricity with the fixed monthly charge. But this modification has been recognized as an evasion, and has met almost as much resistance as the direct service charge.

DISTINGUISHED FROM MINIMUM BILL

The service charge form of rate is generally distinguished from the minimum bill, which has been rather widely recognized as a reasonable provision. The minimum bill, also, fixes a definite monthly sum to be paid by the consumer; but the amount may be applied to a substantial quantity of gas or electricity. Thus, for a fixed minimum bill of $1 per month, the customer would be entitled to receive 800 cubic feet, or some other substantial amount of gas, or 10 kilowatt hours of electricity.

The object of the minimum bill is fundamentally the same as that of the service charge—to protect the company against losses on the part of very small customers who require as much attention, and to a certain extent involve as much cost, as do the larger customers. The difference between the two types is that the one provides a distinct charge without any gas or electricity, while the other permits the consumer to use a substantial amount of gas or electricity for the amount paid. The service charge, therefore, makes the ordinary or small users pay a higher average rate than the large consumers; and, whenever it is first introduced, results in raising the bills of about two-thirds of the customers, and in reducing the bills of the much smaller group of larger customers.

THE SPREAD OF THE SERVICE CHARGE

The drive on the part of the companies has been for the service charge, or its equivalent, with a very small quantity of gas or electricity included with the initial charge. This form of rate has been rapidly extended throughout the country. For the most part, it has been introduced by the companies with the more or less tacit approval of the commissions. The opposition has consisted almost altogether of declaration and rhetoric, rather than cost analysis with relation to a reasonable schedule of rates.

Where any substantial effort was made to support the service charge with proof, the companies have generally presented cost allocations patterned after the analysis sponsored by the national associations. In these calculations, all costs were divided into two groups: (1) Those supposedly dependent upon the number of cus-

tomers, and (2) those dependent upon the quantity of gas or electricity used. If the underlying assumptions as to the *cause* of the costs were to be accepted, and if the allocations were properly made, then unquestionably the first group would be properly divided equally between the number of customers, and the second equally by the quantity of gas sold. The result would be an equitable rate for all consumers.

But, the difficulty has been with the basic assumptions and with the practical subdivisions into the assumedly fundamental group, and, in part, with the disregard of other considerations that enter into a reasonable rate schedule. There are, of course, distinct customer costs, and definite commodity costs; but most of the costs incurred by a company do not fall into this simple grouping, but have mostly been arbitrarily classified as customer costs. This applies to all the general and miscellaneous expenses, to most of the supervisory costs, and to the bulk of the taxes and return on property used in the public service. These are all more or less fixed costs or overheads, and do not depend directly on either the number of customers or quantity of gas or electricity sold. Their inclusion among customer costs is wholly arbitrary, and produces a service charge which is excessive and discriminatory against the smaller users.

The character of these relatively-fixed and non-variable costs, and their relation to a reasonable schedule of rates have been ignored in practically all of the service charge cases. These costs not only do not depend upon the number of customers, but mostly they vary enormously with conditions under which customers are served. Take, for example, the costs relating to distribution mains (or lines) and services. In territories of elaborate single-family houses, the cost per customer is large; while in sections of large apartment houses, the cost per customer is low; but, at the same time, the larger users live mostly in single family houses, and the smaller users in apartments. If, under these circumstances, all such costs are divided equally per customer, and are thus included in a service charge, the smaller customers obviously are compelled to pay costs which are due largely to conditions under which the larger customers are served.

This cost relationship between size of customers and conditions under which the service is furnished, has practically been ignored by the commissions—because it has not been adequately brought out by the opponents of the service charge. Up to the time the New York cases were first heard in 1928, these variations in relative costs with different conditions of service, were never presented to the commissions, and the service charge had become widely accepted, on the erroneous assumption that the costs were due to customers and were the same per customer under all conditions of service.

THE SERVICE CHARGE IN NEW YORK

The service charge movement struck its first intensive resistance in the state of New York. In 1923, after the gas companies (which, much more than the electric companies, have forced the service charge type of rate), had attempted to introduce the service charge extensively throughout the state of New York, the legislature blocked the effort by amending the Public Service Commissions Law so as to make the service charge illegal for gas companies.

Immediately after the enactment of the bill prohibiting the service charge, a considerable number of companies merely changed the rate, from a direct service charge, to the so-called "initial charge," by allowing the consumer, for such a charge, 100 or 200 cubic feet of gas. This modification was, manifestly, a thinly-disguised service charge; but it was permitted to go into effect by a commission which as then constituted was none too critical of the proposals of the companies.

This was the situation in the summer of 1927, when the Brooklyn Borough Gas Company filed a new schedule of rates which, for domestic consumers, replaced the flat rate of $1.30 per M cubic feet of gas, with $1 a month per customer for the first 200 cubic feet of gas or less, and 11 cents per hundred cubic feet for additional gas consumed per month. This rate became legally effective before the consumers were aware of the change. But with the receipt of the first bills under the new schedule, active opposition started, and the commission was petitioned to investigate the legality and the reasonableness of the initial charge. Before the inquiry got far under way, the Brooklyn Union Gas Company filed a similar schedule of rates, which was immediately suspended by the commission, pending investigation of its reasonableness. The two sets of hearings were then continued simultaneously; but in the Brooklyn Borough case the new form of rates was in effect, while in the Brooklyn Union case it was suspended, and the old flat rate of $1.15 per M cubic feet remained.

Just as the procedures in the two cases were different, so the decisions were out of harmony. Although the same issues and the same kinds of facts were presented in the two instances, in the Brooklyn Union case the proposed schedule was rejected, while in the Brooklyn Borough case it was approved. In both cases, however, petitions were filed promptly for re-hearing.

EXTENSION TO ELECTRICITY

Before the re-hearings in these gas cases were completed, the same issue was raised as to electric rates. The four electric companies in the Consolidated Gas system, which supply the bulk of electricity in different sections of New York City, filed a new schedule of rates in the summer of 1930. Their rate schedule had differed widely, both as to form and as to level of charges for similar kinds and quantities of service, and the new schedules proposed uniform rates throughout. They provided a direct 60 cents service charge per month, and a 5 cent rate for practically all electricity used for residential purposes.

This proposal met with opposition, because the 60 cents service charge would result in increasing the rates to the ordinary and small users, against a decrease for large users. In Manhattan especially, there had been the single flat rate of 7 cents per kilowatt hour up to 1000 kilowatt hours a month. The new schedule would result in an increase for all customers up to 30 kilowatt hours per month, and a reduction for those above that quantity. Since the small users are mostly apartment house dwellers, and since Manhattan is mainly an apartment house territory, the increases would apply heavily to Manhattan consumers.

In the case of electricity, the only question raised was the reasonableness of the service charge, and not its legality, because the legislative prohibition did not extend to electric rates. The commission announced, however, early in the electric hearings (also about the same time in the gas hearings), that it would consider all three cases on the same basis, notwithstanding the difference in legal status.

THE RECENT DECISIONS

Early in the summer of 1931, the commission decided, first, the electric case, and then the gas cases. Its interest was centered especially upon the desirability of uniformity and the establishment of proper type of rates not only in New York but throughout the state. The actual decisions carry the sign of compromise, so far as specific provisions within the general form of rate adopted are concerned.

In general, the service charge was rejected as a desirable part of a schedule of gas or electric rates. The rejection was based partly upon the difficulty or impossibility of determining a reasonable service charge which would operate equitably throughout among all classes of consumers; and partly upon the fact that there is the psychology of resistance against the service charge.

The commission, however, recognized the fact that there are certain inescapable costs incurred by the companies as long as customers are attached, even though they use no gas or electricity. To meet this condition, and to prevent such outright costs to be paid by other customers, the commission adopted a minimum bill, under which the customers are allowed a substantial quantity of gas or electricity with the fixed monthly amount paid.

The minimum bill, both for gas and electric companies, was put at $1 a month per customer. For gas, there was included in the minimum bill 600 cubic feet per month per customer for the Brooklyn Union Gas Company, and 500 cubic feet for the Brooklyn Borough Gas Company.

For electric residential customers, the minimum bill of $1 allows 10 kilowatt hours; the next 5 kilowatt hours are furnished at 6 cents, and all over 15 kilowatt hours, 5 cents per kilowatt hour.

AN INDIRECT SERVICE CHARGE

Analysis of these rates shows that the commission does provide for an indirect service charge, as embodied in the minimum bill and, in the case of electricity, in the somewhat higher intermediary charge between 10 and 15 kilowatt hours per month. In the case of gas, the follow-up commodity rates were not definitely fixed. It is assumed, however, that for the Brooklyn Union Company the follow-up rate will be 9 cents per 100 cubic feet, and for the Brooklyn Borough 10 cents. On this basis, all consumers who use at least the amount of gas provided for in the minimum bill, will pay a service charge of 46 cents to the Brooklyn Union, and 50 cents to the Brooklyn Borough.

Similarly for the electric companies, the ordinary consumers who use at least 15 kilowatt hours a month, the indirect service charge comes to 55 cents a month. Those who use less than the amount of gas or electricity allowed in the mini-

mum bill, will pay more than the standard indirect service charge, and the maximum comes to $1 per month per customer.

Thus considered, the standard service charge ranges from 46 cents a month for the Brooklyn Union, to 55 cents a month for the electric companies. In each case, however, the customer is entitled to a substantial quantity of gas or electricity with the fixed one dollar per month. The schedules tend to meet the requirement of reasonable rates, as well as the legal prohibition of the service charge for gas.

The one dollar per month as thus fixed cannot be designated directly as a service charge in form. It is of the minimum-bill type, which was not prohibited by the New York statute, and which is generally distinguished from the service charge form.

Considered merely as to the amount of the indirect provisions to meet the cost of service, as distinguished from charges for gas or electricity, a charge of 46 cents to 55 cents cannot be regarded as unreasonable. If distinct provisions are to be made, directly or indirectly, in a rate schedule for the rendering of service, then the amount could not be much less than established indirectly through the type of minimum bill as fixed by the commission.

DOUBT AS TO REASONABLENESS

Under New York City conditions, and generally under conditions prevailing in cities throughout the country, there is doubt whether even such a moderate, indirect service charge should be imbedded in the schedule of rates for domestic users. While, of course, there are distinct service costs which, *considered by themselves*, would under most city conditions come close to 50 cents a month per customer, this is not all there is to an appropriate cost analysis. There is, first, the question whether all properly determined customer costs are really equal, per customer, for all customers. And there is the second question, as already indicated, whether the relatively fixed costs do not vary greatly with service conditions, and whether in reality they should not properly be allocated much more per customer to the larger users.

In New York, and in most cities, there is a wide difference in service costs between different customers. There is a still greater difference in the fixed costs imposed upon the company by the relative conditions under which different classes of customers are served. If these differences are properly considered and balanced against the service costs, in our judgment the validity of a standard service charge disappears, and a flat rate with a minimum bill seems the most reasonable all-around rate for domestic schedules.

As applied to the New York rates, there is grave doubt whether there is justification for a higher commodity rate applied to the gas included in the fixed monthly charge than for consumption beyond the initial quantity.

APARTMENT HOUSE CUSTOMERS

While there are all kinds of variations in conditions under which different classes of customers are served, the most significant distinction in New York, and in most cities, appears between the mass of apartment house users and consumers in single family houses. The small users, as a class, dwell mostly in apartment houses, while the larger users, as a class, dwell in single family houses. If all the costs relating to these classes are carefully analyzed, it will appear that the cost per customer is much less for the apartment house consumers than for the single family house consumers. This applies not only to ordinary service costs but particularly to fixed costs; less, generally, per customer for the small users, and more for the large consumers.

If, therefore, a separate service charge is to be established in the rate structure, there should equitably be a distinct difference in the amount for the two classes of conditions, and there should also be variations for intermediary circumstances. But the fixing of different service charges for different conditions leads to complication of rate structure and would probably not be practicable. Hence, to offset the conditions of lower customer costs and fixed costs for customer for the small users in apartments, as against the higher per capita costs for the larger users in the single family houses, the flat rate automatically provides a balancing of the obverse cost factors. While it would overburden the small apartment house customers with some costs, it would undercharge them as to others; and it would affect obversely the large single family house users. There is, in our judgment, no single and simple form of rate which, in a large territory, meets all-around more equitably the wide variations in service conditions. There is, however, justification in coupling the flat rate with a moderate minimum bill, to protect the company against losses from very small users.

NOTES AND COMMENT ON MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER

Director, Virginia Bureau of Public Administration

International Institute of Administrative Sciences.—The fourth session of the *Institut Internationale des Sciences Administratives* is from many points of view one of the most interesting meetings of the organization, especially in respect to the conclusions which it produced. Its deliberations are particularly significant, coming as they do at a period in which the future of local self-government in Europe seems indeed perilous. The virtual collapse of English local finance under the strain of unemployment insurance costs, the *staatskommissar* agitation in Germany, and the progressive devitalization of local government in Italy and Spain under the militarists have created a grave concern among students of administration for the future of *selbstverwaltung*. From this angle, the conclusions of the Institute cannot be otherwise regarded than as a direct reprimand.

The Institute is composed of probably the most distinguished group of academicians and practicing specialists in the field of public administration at the present time. While primarily a European and Continental group, the United States was represented in its councils by Professor John A. Fairlie of the University of Illinois. Dr. Leonard D. White of the University of Chicago is a member of its executive organization.

A liberal translation of the "conclusions" of the Institute, which appeared in the *Revue Internationale des Sciences Administratives* for the quarter ending June, 1931, is given below. The Institute was divided for the expedition of its deliberations into six sessions or round tables, and its conclusions appear as they issued from these subordinate groups.

Section I. Metropolitanism

The Congress, without entering into a discussion of the acute political problems and refraining from critical opinions with reference to the legislation of the states represented in the first section:

(1) Observes an almost universal movement propelling the great cities of the world in the direction of a régime of democratic liberty and of limited autonomy through the intervention of the central authorities when the higher interests of the state demands.

(2) Recognizes for the large cities, and especially for the seats of government, the possibility of a special régime adapted to the peculiar circumstances of each country.

(3) Recognizes that primary among the organic problems of the government of great cities resulting from the exigencies of intense urbanization is that of the new conception of social assistance in its multiple forms, going far beyond the principles of individual responsibility and of social assistance as a matter for the family, for which a régime of sane financial administration is necessary in order adequately to meet the expenses necessary to this purpose.

Section II. Communal Powers and Intermediary Authorities

(1) Substantive municipal autonomy is recognized as a necessity of modern politics and administration, and for the purpose of avoiding the potentially abusive intervention of the superior authorities, central and regional, in municipal affairs it is advisable to entrust the preservation of the basic requisites of local self-government to the tribunals of justice consecrated to the interpretation and application of the public law.

(2) The state should take cognizance, in its general regulations concerning local government, of the individual historic attributes and the factors in the evolution of municipalities which compel a differentiation in characteristic traits, thus avoiding the imposition of a stamp of uniformity, so that municipalities may develop in their own manner.

(3) The complexity and diversity of modern local administration demand the creation of specialized administrative organs with specified jurisdiction and under the complete control of an appropriate authority.

(4) Experience with mixed enterprises, involving both public and private representation therein, demonstrates the practicability of organizing public enterprises on a regional basis, the direction of which may be reposed in joint bodies representing the state and the private organizations interested in the facilities afforded by these services—which services may be financed jointly by the state and the private corporation.

(5) The growing intensity and complication of the labor problem in present times indicates the need of local arbitral institutions composed of representatives elected without constraint by the organized bodies of workmen, of employers, and of consumers, who, on an equal footing and under the direction of representatives of the state, regulate the conditions of labor and rationalize the development of production. It is equally advisable to establish national institutions of a public character, having as their object the intensive study and attempted solution of economic and social problems in their national aspect, composed of representatives of the organized laboring and consuming bodies and of delegates of the state. These organizations should have as their special mission the coördination of all economic forces of the country and the harmonization of the activities of the subordinate arbitral bodies in their internal and external relations.

Section III. The State

(1) It is advisable to stimulate the development of responsible labor unions for public administrative employees, having for their objects the development of administrative technique, the improvement of the position of officials in service, and the utilization of measures of social action which this presumes—however, in admitting their right to petition and to communicate with the state, preserving ministerial initiative and parliamentary responsibility, the right of interested parties to recourse cannot be impaired.

(2) Although functional decentralization appears in principle to be a fundamental of administrative organization, it cannot be accepted in an absolute manner as a general rule. It is clearly recognized that the geographical extent of the state, the organic unity of control maintained, the intellectual culture of the citizenry, the economic strength of the country, its social structure, its education and its political practices, etc., have a direct and inescapable influence on good administrative organization.

(3) In consideration of the growing importance of the large consultative staffs of the central administrations, especially legislative commissions, it is necessary to assure to these staffs an adequate organization which should correspond to the functions with which the consultative group is charged. This organization must take account of differentiating conditions existing in each country.

(4) It is urged to create in each country a consultative staff especially charged with the study of questions concerning the organization of public administration and with the elaboration of projects of law related thereto.

Section IV. Personnel

(1) The preëminence of the public official at the present time as the custodian of very important constitutional and administrative rights demands the most assiduous effort on the part of the state in the recruitment and proper preparation of public functionaries.

(2) It is necessary to organize adequate preparatory institutions for officials, taking as models in this matter the states which have made this preparation the object of university study or have established schools the purpose of which is the preparation of men for political and official careers, and which provide for a special curriculum and diploma in the administrative sciences.

(3) Popular election, however satisfactory it may be as a means of elevating to public trust the representatives of the people, must be rejected as a method for the enlistment of true administrators, that is, "career" men in the public service, because their election will bind them to a mode of action exclusive of the interests of all but their political organizations.

(4) The direct election of administrative officials *on the basis of their political affiliations* is a system detestable to proper recruitment, appropriate only to backward countries or to exceptional governments.

(5) Before beginning specialized administrative studies it is urged that the candidate be required to have frequented a secondary school or a university, according to the importance of the post sought, and to have sustained a psychological examination, after which studies in the special administrative schools should be pursued according to the degree of academic training required for the post for which he is preparing. These special administrative schools should be integral parts of universities except in cases

where they are sufficiently well established to permit their independent functioning.

(6) Upon the completion of these specialized studies it is advisable that candidates be selected by process of competitive examination of a practical character, and that accepted applicants be accorded probationary tenure in order to secure an adequate test of their abilities.

(7) Advancement in the service should also be upon a competitive basis.

(8) Continuation courses should be established for the improvement of officers in the service.

(9) An absolute sense of moral responsibility in addition to intelligence, diligence, and competence is requisite for an acceptable functionary.

Section V. Documentation

(1) Public administrative authorities are encouraged on their own initiative to experiment, upon the basis of the decimal classification of the *Institut de Bibliographie* of Brussels with the systematic organization of administrative documents, adapting the general principles of this system of classification to their own particular needs.

(2) A permanent commission of administrative documentation composed of delegates from the governments or from special organizations of all countries should be established by the International Institute of Administrative Sciences, and to this commission should be entrusted the duty of continuously studying questions of documentation and of conducting negotiations relative to coöperation in the matter of organizing administrative documents.

(3) This permanent commission should also be charged with all duties relating to the development of the International Administrative Museum, with the drafting of its statutes and with the study of the possibilities of securing administrative documentation in conjunction with the secretariat of the League of Nations. . . .

(4) In connection with this commission and with the Museum, an International Institute for research and experimentation in the methods of administrative documentation should be established and should be especially charged with the duty of setting up the requirements for model bureaus of administrative documentation adapted to the needs of small, medium and large administrative organizations.

(5) The principles and methods of administrative documentation should be introduced in all the phases of instruction in administrative affairs.

(6) In order to provide the public administrative organizations and the administrative scientists with the means of documentation certain tools are requisite, such as:

a. An International Review.
b. An International Encyclopaedia published in volumes.
c. A Universal Atlas of Administration.
d. An International Manual of Administrative Documentation Including Methods and Classifications.
e. An International Bibliography of Administrative Matters (titles and résumés).
f. A Bulletin of Comparative Administrative Legislation.
g. An International Year Book containing an account of progress during the year and including reference to the administrative organisms, to their acts, and to legislation.

GOVERNMENTAL RESEARCH ASSOCIATION NOTES

EDITED BY RUSSELL FORBES

Secretary

Recent Reports of Research Agencies.—The following reports have been received at the central library of the Association since June 1, 1931:

California Taxpayers' Association:
- *Report on Methods Used in Reducing the Budget of Glendale.*
- *Report on the Nursing Department, Pasadena Hospital.*

Chattanooga Chamber of Commerce, Bureau of Government:
- *A Proposed Amendment to City Charter, Centralized City Purchasing.*
- *The Reorganization of the City Pension System.*
- *Proposed Sewer Bond Act.*
- *Proposed Charter Amendments.*

Cincinnati Bureau of Governmental Research:
- *Procedure for the Billing, Collection and Settlement of Taxes for Hamilton County, Ohio.*
- *Proposed Ordinance to Establish a Retirement System for the Employees of the City of Cincinnati.*
- *Report on a Proposed Retirement Plan for Employees of the City of Cincinnati.*

Taxpayers' Research League of Delaware:
- *Greater Delaware, a Review of Past Activities and a Statement of Program.*

Detroit Bureau of Governmental Research:
- *The Growth of City Government.*

League of Kansas Municipalities:
- *Outline of Instruction—Police Training School, Wichita, Kansas.*

League of Minnesota Municipalities:
- *Grading Municipalities to Determine Fire Insurance Rates.*
- *Municipal Accomplishments 1930. Special Programs for 1931.*

Thomas Skelton Harrison Foundation, Philadelphia:
- *The Magistrates Courts of Philadelphia.*
- *Statistical Department of the Municipal Court of Philadelphia.*

Rochester Bureau of Municipal Research, Inc.:
- *Acquisition of Real Estate for Public Improvements in the City of Rochester.*

Municipal Reference Bureau, League of Virginia Municipalities:
- *License Taxes on Hawkers, Peddlers and Itinerant Merchants in Virginia Municipalities.*
- *License Taxes on Abattoirs and Butchers in Virginia Municipalities.*
- *License Taxes on Amusements in Virginia Municipalities.*

Bureau of Government Research, University of West Virginia:
- *Codify Your Local Ordinances.*

League of Wisconsin Municipalities:
- *State Control of Public Utilities.*

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Nominating Committee Provided by Change in Constitution.—The recent referendum of the membership, involving a change in the first paragraph of article five of the Constitution, resulted in a vote of seventy-six in favor of the change and six in opposition. By the result of this referendum, the executive committee is authorized to appoint three members as the nominating committee. This nominating committee will nominate twelve active members as candidates for the executive committee. From this list of twelve, the active members will elect five by proportional representation to serve as an executive committee for the next year.

As the first committee on nominations under the changed constitution, the executive committee has appointed the following: William C. Beyer, Philadelphia Bureau of Municipal Research, *chairman;* Paul V. Betters, The Brookings Institution; and Orin F. Nolting, the International City Managers' Association. The report of the committee will be announced in September.

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California Taxpayers' Association.—One of the chief accomplishments of the 1931 session of the California state legislature was the passage

of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 which was sponsored by the Association and other civic organizations.

The new law is designed to work in conjunction with existing special improvement laws and establishes a procedure which must be followed and certain limitations which may not be exceeded. The act provides for the investigation of each proposed project before it is started in order that full information regarding its practicability and probable cost may be made available to the taxpayers. Provision is made for the effective notification of property owners as to the details of the proposed improvement and its estimated cost. A positive limitation is established on the special assessment burden which may be imposed. The burden for any one assessment may not exceed 50 per cent of the true value of any parcel of land assessed and, in addition, the total of all special assessments on all the land in the proposed district may not exceed 50 per cent of the total true value of the district. Probably the most important provision of the act is the absolute power of protest which it restores to the people. Any project may be halted for one year by a majority protest of the property owners involved.

Much of the protection offered by this remedial legislation is null without definite action by the property owners. The act allows the city council or county board of supervisors, if they find after certain study that the cost of the improvement will not exceed the limitations provided, to send out a notice of the proposed assessment, attached to this notice is a return post-card on which the property owner may "demand" or "not demand" the use of this law. If the owners of at least 15 per cent of the area of the district do not demand the use of the act, the legislative body is "at full liberty to proceed" with the improvement and to disregard the provisions of the new law, except the provision for an effective majority protest.

The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 does not apply to flood control, irrigation, reclamation, sanitary, sanitation or other districts which constitute public corporations, nor does it apply to public improvements which are financed through bond issues approved by the people at elections. It only applies to improvements which are financed through special assessments.

It is believed that the proper administration of this act will not retard a safe and healthy growth of the state, but will make for a balanced progress which is within the ability of the taxpayers to support.

The Survey of the Pasadena City Schools which has been in preparation for over a year, is about to come from the press. The general objectives of this survey have been a review of the services and functions performed by the schools of Pasadena; an analysis, evaluation and comparison of each of these activities with recognized standards; and recommendations for improvement. The survey found that school expenditures in Pasadena are relatively high in comparison with other communities, but that the pupils are receiving a more than usually rich curriculum.

The survey of the schools of Fresno County is now being published and will be available in the near future. It indicates that consolidation of school districts offers one of the more effective methods of reducing educational costs.

The Thomas Skelton Harrison Foundation.—A report by Spencer Ervin, Esq., of the Philadelphia Bar, on *The Magistrates' Courts of Philadelphia*, has just been published. It is the result of a number of years of study financed by the Harrison Foundation. It contains chapters on the history of the Philadelphia magistrates, who are Philadelphia's justices of the peace, their functions, and their place in the scheme of justice. After this preliminary matter there is a chapter picturing the courts in operation, showing a large number of deficiencies among which are political influence, late and faulty returns, lack of a system of reporting, bail frauds and irregularities, justice not according to law, lack of dignity on the bench, and intimidation and corruption.

In the author's diagnosis of the situation, he finds the magistrates are not qualified, largely because of their lack of legal training, that the court machinery, of which they are a part, is defective, and that the environment in which they work is unwholesome. He recommends the abolition of the magistrates' courts and the assumption of their functions by the Philadelphia Municipal Court. Mr. Ervin feels that one result of this, aside from simplifying the judicial structure by the elimination of 28 independent tribunals, would be to bring within the influence of judicial tradition and bar opinion those who perform the functions of justices of the peace.

The Foundation has also published a report by the Bureau of Municipal Research on the statistical department of the municipal court of Philadelphia. This is the ninth published report growing out of the Bureau's survey of the municipal court. Dr. Kate Holladay Claghorn, of the faculty of the New York School of Social Work, made the study and is the author of the report.

The Philadelphia municipal court is noteworthy among courts for recognizing the importance of court statistics, and for devoting much time and effort, as a special part of its reports, to their collection and distribution. A trained statistician is in charge of the work and mechanical tabulation is used in preparing the statistical products.

Dr. Claghorn, in her report, lists the statistical file, special reports, and an annual report as the statistical products of the court, and sets up standards for each. As the most important product of the Philadelphia court's statistical department is the annual report, Dr. Claghorn's study dealt chiefly with it. There is a full analysis of the method of gathering, preparing, and presenting the statistics in the annual report with detailed comments and recommendations.

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Taxpayers' Association of New Mexico.—The staff of the New Mexico Taxpayers' Association is at present occupied in assisting the state comptroller in sending out the approved budgets to county and municipal authorities. These budgets have been recently approved by the state tax commission and at the present time, with the assistance of members of the staff of the Taxpayers' Association, the tax rates are being determined for all units of governments.

The director of the Association, Rupert F. Asplund, has completed the work of reviewing and analyzing the budgets of the various state institutions and departments for the governor. During the latter part of the year the Association's efforts will be devoted to a survey of the various state institutions, with a view to submitting information desired by the governor as to possible economies in administration.

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Schenectady Bureau of Municipal Research.—An area of more than five hundred acres within the city is not served by a public sewer system, and plans for remedying this were under way. The land is still comparatively undeveloped, especially half of it. The necessary engineering and construction work would include trunk sanitary sewers, storm sewers, and pumps to raise the sewage to the city disposal plant. The sewer system for the more developed half should obviously be built, but the Bureau suggests, without formally recommending, that the other part might be removed from the sewerage problem if it were purchased by the city for a public park or golf course. This plan would cost about 30 per cent of that of the new sewerage system, would provide the city with a park in the section which first meets the visitor from the railroad, and would raise surrounding land values so that the more developed area might be better able to meet the sewer assessments. A novel way of cutting sewer costs! The Bureau project is being studied by the council.

Thirty cities similar to Schenectady in size and industrial status are being compared for departmental cost of operation. This work is being done by Dorothy Good who recently joined the staff of the Schenectady Bureau of Municipal Research.

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Stamford Taxpayers' Association.—The Association is partly responsible for the decision of the new administration to cancel the plans of last years council for two new incinerator units. It is expected that under more careful operation, the present plant will be adequate. Other work of the Taxpayers' Association has included studies of the care of the poor, comparative tax rates, comparative costs of types of pavement. The legislature enacted the law proposed by the Association for the reorganization of assessment methods.

The proposed council-manager charter has been completed and descriptive material prepared for popular distribution. Periodical releases of material on the subject are made through large posters placed in store windows. In the hope that this material will have the desired effect, a measure to permit a referendum was submitted to the legislature and passed by it.

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Institute for Government Research, Washington, D. C.—For the second successive year the publication work of the Institute for Government Research has been comparatively restricted due to the fact that so many members of its staff have been engaged upon special studies or work for outside organizations. However, two recent service monographs have been published as follows: *United States Shipping Board*, by Darrell

H. Smith and Paul V. Betters; and the *Personnel Classification Board*, by Paul V. Betters.

Lawrence F. Schmeckebier has been devoting his time to the "Cost of Criminal Justice Studies" in connection with the program of the Wickersham Commission. Lewis Meriam has only recently completed his work with the President's Committee on Employment and is now carrying on a number of special investigations having to do with the general problem of Indian administration. H. P. Seidemann, Herbert Wilson and Paul V. Betters conducted the field work for the survey of state and county government in North Carolina which was published last winter. This report served as the basis for the several reorganization measures and the new county government finance laws enacted by the North Carolina General Assembly this spring. Mr. Betters served as technical assistant to Governor O. Max Gardner of North Carolina for a short time on state reorganization proposals.

At the request of the Governor of New Hampshire, H. P. Seidemann and Taylor G. Addison are in New Hampshire installing a budgeting and accounting system for the state government. The Institute prepared a budgeting and accounting law which was passed by the New Hampshire legislature this spring.

A number of the Institute's staff are now conducting field work for an administrative and taxation survey of Mississippi which was initiated June 1 at the request of the Research Commission of the State of Mississippi, created by the last legislature. A. C. Millspaugh, former Administrator-General of Finances in Persia, F. W. Powell, Herbert Wilson, and Paul V. Betters are in the field at the present time. Dr. Benjamin P. Whitaker of Yale University is assisting the Institute on this particular study. It is expected that the report will be submitted in time for consideration by the legislature when it convenes in January.

Dr. Lloyd M. Short of the University of Missouri has been in residence at the Institute the past year, bringing to completion a book on the Bureau of Agricultural Economics. Milton Conover of Yale University is also at the Institute devoting his time to the preparation of a volume on the Extension Service of the Department of Agriculture. Both F. F. Blachly and Miriam E. Oatman-Blachly are in France making final revisions on a book dealing with the government and administration of France. This will be a companion volume to their *Government and Administration of Germany* published by the Institute in 1928.

NOTES AND EVENTS

EDITED BY H. W. DODDS

Department Editor Assumes New Post.—On July 1, Rowland A. Egger, editor of the department of Municipal Activities Abroad, assumed his new duties as director of the Bureau of Public Administration at the University of Virginia. The new Bureau will work in coöperation with the League of Municipalities upon research problems affecting municipalities of the state. For the past year Mr. Egger has been serving as a staff member of the New Jersey Commission for the Investigation of County and Municipal Taxation and Expenditures.

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L. D. White Appointed to Chicago Civil Service Commission.—One of the early acts of Mayor Cermak of Chicago was the appointment of a new municipal civil service commission headed by Richard J. Collins, a business man and a former member of the commission. The other two members are Professor Leonard D. White of the University of Chicago, and Joseph D. Geary. Dr. White is a nationally known authority on civil service law and personnel administration. In the words of the National Civil Service Reform League, it would be difficult to select a better prepared or more competent person for appointment to this important body in which lies the hope of Chicago for a resurrected public service.

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The Research Commission of the State of Mississippi, appointed at the last session of the legislature, has engaged the Brookings Institution of Washington to make an administrative and financial survey of the entire state government. Financial administration and revenue and tax systems will receive special emphasis.

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New Jersey Municipalities Appears in New Form.—With the July issue, *New Jersey Municipalities* leaps from a four-page pamphlet to a full-size monthly magazine and continues in its new dress as the organ of the New Jersey State League of Municipalities. For the time being it will confine itself chiefly to municipal problems, but expects gradually to expand into the field of state and county government. The first number presents an imposing array of leading articles from the pens of Senator Arthur N. Pierson, Assemblyman Russell S. Wise, Dr. H. L. Lutz, Lieut. John E. Murnane, H. P. Croft and C. E. F. Hetrickt. Spaulding Frazer, New Jersey's leading authority on the law of municipal corporations, conducts a department headed Legal Notes and Comment. Russell Van Nest Black is in charge of the Civic Planning Department. Sedley H. Phinney, secretary of the League, is editor, and Wylie Kilpatrick managing editor.

The July number is of a high order and marks an important addition to the growing list of magazines published by State Leagues of Municipalities.

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New State Purchasing Department Will Save $400,000 in First Four Months.—The new state purchasing department of North Carolina, which began operations on July first, is off to a flying start. Its first major purchase was a contract for a year's supply of gasoline for all the state departments and institutions. Bids were asked on the state's requirements for a year, estimated at 10,000,000 gallons. The contracts were awarded to the Texas Company and three independent companies each of whom is given the contract for furnishing gasoline in certain areas of the state. The contracts are at prices averaging 6¼ cents below the prevailing tank car price, 5¼ cents below the tank wagon price and 3 cents below the prevailing service station price. This one contract will, it is estimated, save the state at least $150,000 this year.

The state purchasing agent has also entered into contracts for the state's requirements in other staple commodities. The state uses more than 18,000 pairs of shoes per year, 1,500 automobile storage batteries, 15,000 feet of brake lining and other articles in correspondingly large quantities. If the contract price for these commodities compares with the savings on gasoline, the guarantee of Governor Gardner that the state purchasing system would save $400,000 per year will prove to be entirely too conservative. Present indications are that the state purchasing office will save this amount in the first three months of this operation.

As director of the division of purchase and contract, Governor Gardner appointed A. S. Brower, formerly a purchasing agent and comptroller for one of the educational institutions. Mr. Brower is organizing his department along sectional lines with a buyer in charge of purchases for the state highway, another for the institutions, a third for the schools and a fourth for printing. The rules and regulations already set up and the memorandum to using agencies indicate that the department will prove to be a real service institution and a most valuable branch of the state government.

RUSSELL FORBES.

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Kansas City's Improvement Program Under Way.—Following the voting on May 26 of a program of $39,950,000 of city and county bonds, the Citizens' Advisory Committee, appointed in advance of the election, has met and formally set forth its purposes and plans for meeting its obligations to the public in supervising the expenditure of bond funds.

First, the committee will assume general supervision over the expenditure of all the bond money, the dates of issuance and the maturity of bonds. It will review the plans and specifications for the different projects, check all contracts, and keep a record of all expenditures.

Second, the committee regards it as a specific duty to regularly report its findings to the public.

Third, the technical study of architects' and engineers' plans and specifications.

Fourth, the inspection of the work as it progresses.

The committee announced the intention of employing such expert services as are necessary to keep it currently informed of the progress of carrying out the ten-year program. The committee has made it clear that it regards its function as purely advisory, but that it proposes to use its limited authority to the fullest extent.

Conrad H. Mann, who served as general chairman of the civic improvement committee, which developed the ten-year program, has been selected as chairman of the advisory committee.

The program calls for the issuance of not more than one-tenth of the $32,000,000 of city bonds in any one year. The first project to be undertaken is a new municipal auditorium, for which $4,500,000 of bonds has been authorized. The council has authorized the condemnation of the block of ground immediately south of the present convention hall for this purpose, and the work of preparing plans and letting contracts for this building will proceed with all possible haste. Contracts have been let for $791,212 of the $3,500,000 road program for which county bonds were authorized.

RAY W. WILSON.

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The Tax Problem in Michigan.—The Michigan legislative session of 1931 considered at great length the problem of delinquent taxes and of bonded indebtedness. The 1930 annual report of the auditor-general showed state and local taxes for 1929 returned delinquent to the extent of $36,352,835.83. In other words, the amount of 1929 state and local taxes returned delinquent was more than the general 1929 levy of the state which totaled $29,500,000. Tax delinquency in Michigan has been due not only to economic conditions but also to the rather lenient tax delinquency penalties.

Furthermore, the 1930 annual report of W. T. Manning, head of the bond division of the state treasurer's office, showed that Michigan's governmental subdivisions had a total bonded indebtedness of $618,208,053 as of June 30, 1930. This figure did not include the state's own bonds which totaled $82,250,000. Neither did it include covert road and drain district bonds which were unreported. Of the total bonded indebtedness of local units, Wayne County and its subdivisions carried $407,403,129. Very naturally, the state legislature of 1931 debated numerous proposals to reduce tax delinquency and to prevent any rapid increase in bonded indebtedness.

Two pragmatic measures were passed to deal with the problem of tax delinquency. Debt holidays have been popular this year and the Michigan legislature was no exception. The Miller-McBride bill which became Public Act No. 72 lifted the penalties on delinquent 1929 and 1930 taxes. It provided specifically that: "Any nineteen hundred twenty-nine and nineteen hundred thirty state, country, township, and school district taxes, general and special, which are unpaid at the time this act goes into effect, may be paid between the effective date hereof and July first, nineteen hundred thirty-one, without penalties, fees and interest charges." The act took immediate effect. This measure was looked upon as the minimum of emergency relief which might be extended without encouraging additional delinquency.

Public Act No. 26 of the 1931 legislative session is also in point. This stipulated that governmental units might borrow in anticipation of the collection of delinquent taxes. Section 3 provided that "Any such governmental unit [county, township, city, village or school district] may borrow money in anticipation of the collection of delinquent taxes for any preceding fiscal year. No such loan against the delinquent taxes of any such preceding fiscal year shall exceed sixty per cent of such taxes. . . ." This was regarded as a safe margin inasmuch as past experience in the state had shown that 90 per cent of delinquent taxes were ultimately collected. The bill should be regarded not as an open invitation to further bonding as some have suggested, but as the fixing of a safe legal limit to borrowing which was justifiable under existing conditions in certain cities. To date the act has not been abused.

MODIFIED INDIANA PLAN FAILS

The members of the legislature were not satisfied with mere emergency legislation. The feeling prevailed that some constructive measures should be evolved to prevent a recurrence of the existing situation. In the forefront of the suggestions was the Culver bill, a modified form of the Indiana plan. Under its terms the power to review local budgets and bond issues upon local petition was to rest with the state tax commission. The Culver bill failed of passage in the house by the close margin of 43 to 46. Then Governor Brucker urged its adoption. The house reconsidered and passed the measure. In the struggle of contending forces the bill had, however, been amended until it suffered from the process. No municipality was to be subject to its provisions without a favorable local referendum. Regardless, the senate put the measure to rest with only 13 affirmative votes, whereas 17 were needed for passage. The Michigan Municipal League had insisted throughout that the measure was contrary to the spirit of municipal home rule in the state, that it would deaden the interest of the average citizen in local self-government. In part, the defeat of the Culver bill was a victory for that point of view.

Senator Stevens' bill for a survey of local rural government in the state was more kindly received. This bill became Public Act No. 156. It provides for the creation of a state commission to study county, township, and school district government. Inasmuch as the House passed this measure unanimously, they tacitly admitted that whether or not there was something rotten in the state of local rural government, it needed a survey. Public Act. No. 156 is a good omen for the future. Ultimately, it should have results much further reaching than the pragmatic acts to deal with tax delinquency. The measure calls for a commission of five appointed by the governor. Section 2 provides that: "Said commission shall select certain typical counties, townships and school districts and shall make a detailed study of the present cost of maintaining the same and shall submit a detailed statement of the probable cost of the maintenance of the same units under any recommended changes."

Local rural government in Michigan is now operating under a crushing constitutional burden. The state constitution requires cumbersome county boards made up of representatives from townships and cities. The chief administrative officials are all elective by constitutional mandate as well. The rural areas are struggling to maintain township governments. Thousands of small rural school districts dot the state. The intent of section 2 becomes clear in the face of the existing situation. The commission has a wide field of possible recommendations; county home rule, the county manager system, elimination of the township, creation of county school units and what not. The act grants the commission and its authorized representatives authority to examine the files and records of any county, township or school district. Members of the commission are to serve without compensation other than actual and necessary traveling and other expenses. They may employ assistants and fix the compensation therefor. Only five thousand dollars was appropriated for the work of the commission.

The practical measures for the relief of tax delinquency produced much argument both pro and con. The movement for the Indian plan created one of the most heated debates of the session. The move for a state commission to survey local rural government met with more general approval. At least, the legislature has admitted that something more than tinkering with the existing mechanism of county, township and school district government is needed in Michigan.

ARTHUR W. BROMAGE.

THEORY AND PRACTICE IN BUILDING LINES UNDER EMINENT DOMAIN

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THEORY AND PRACTICE IN BUILDING LINES UNDER EMINENT DOMAIN

For years it has been quite the custom to refer to the establishment of building lines[1] as a sort of panacea for narrow streets. But what, in actual fact, has been the experience of different communities with building lines? To what extent have such lines been established? Has any consistent policy been pursued in their establishment? Once established have they been permanently maintained? How are existing and prospective building lines harmonized with the zoning provisions relative to front yards? Answers to such questions should throw considerable light upon the importance and dependability of building lines in any major thoroughfare program.

Building lines have been established here and there in a more or less desultory manner by cities all the way from Massachusetts to Texas, and from Virginia to Illinois. But the experience of these numerous cities is practically a sealed book. There is almost no literature at all upon the subject.

Under these circumstances, it was thought that a brief survey of the subject in a state like Connecticut, with numerous cities of long and varied experience with building lines, would prove of distinct interest and possibly of some benefit.

The authority for the establishment of building lines in Connecticut cities is usually found in the local charter. As every city charter is a matter of special legislation, the provision relative to the establishment of building lines varies from city to city. For towns the authority of building lines is, as a rule, found either in the general or special town plan act. But except in the case of towns, the planning commission is not identified with the establishment of building lines. This fact has been and is a source of real weakness; the planning commission should be the most aggressive and constructive agency in the city administration concerned with the establishment of building lines; it should by no means be divorced from their consideration. Certainly, the initiative in laying down building lines should come from the planning commission. Otherwise, how can they be properly coördinated with the plan of the community?

The charter in some Connecticut cities limits the maximum setback distance of building lines. In Bristol, for instance, the maximum limit is 20 feet. In Bridgeport building lines could, until a few years ago, be established no more than 12 feet back of the property line. This distance has, however, recently been changed to 25 feet. Maximum limits of this character, it is felt, are a mistake, since in many instances they prevent the establishment of building lines adequate to meet local conditions.

ESTABLISHMENT OF BUILDING LINES IN WATERBURY

A typical city may be taken to illustrate the general procedure in the establishment of building lines. Wat-

[1] Building lines as used in this paper involve lines established under eminent domain; not front yards or setbacks laid down in zoning ordinances, nor building lines contained in covenants running with the land.

erbury will probably serve this purpose as well as any other city. In Waterbury the board of aldermen has the power to establish building lines. But no building lines may be established unless all the damages awarded to the owners of land affected by the establishment of the line can be balanced by benefits assessed upon the property situated on the particular street. Wherever the board of aldermen establishes a building line, it refers the matter to the bureau of assessment, which ascertains the benefits and damages to the several parties affected, and then makes a report of its findings back to the board of aldermen. The board of aldermen then has the power to establish the building line and to assess against each owner the sum which he pays in the way of benefits.

The assessment of benefits and damages, as in Waterbury, is customary among all municipalities in Connecticut. Whenever new streets are laid out or the lines of existing streets are changed, building lines are established by the board of aldermen. Until such a building line has been established, it is unlawful for any person to erect or place a building on a street. After establishment of the line, it is unlawful for any person to place any building or structure nearer the street than the established line, but verandas, porches, balconies, cornices and other similar projections may be established 8 feet beyond the building line, provided they do not project beyond the street line.

Numerous building lines have, under this authority, from time to time during many years past been established on different streets in Waterbury. Some of these lines are as far back as 30 feet from the street line. But despite the long time that building lines have been possible in Waterbury there has been no consistent policy governing their establishment. On some blocks they have been established; on other blocks they have not. Often when they have been established, the distance from the street line varies from block to block upon the same street.

UNIVERSALITY OF BUILDING LINES IN HARTFORD

In few cities have building lines been more uniformly established on all streets than in Hartford. In some cities in Connecticut building lines are, if not altogether unknown, practically unknown; in other cities, building lines are quite common, being applied to 10, 20, 30 per cent of the street mileage. But in Hartford, outside of the downtown district, practically every street accepted by the city has a building line varying in depth all the way from 5 or 10 feet up to 50 feet. In some instances the building lines have been supplemented by veranda lines. Where this has been done the veranda line determines the distance which porches and verandas may project beyond the building line. Most of the building lines that have been established vary in depth from 15 to 25 feet, although deeper building lines are far from uncommon. Indeed, on such important streets as Farmington Avenue, Asylum Street, Washington Street and Wethersfield Avenue, there are many blocks with 50-foot building lines. At the same time, however, on other streets, one will occasionally find one- and two-foot building lines.

The salvation of the Hartford thoroughfare plan lies in the building lines established in past years. Streets in Hartford are in themselves no wider than those of most cities, 50- and 60-foot streets being the predominant widths. Many of the most important thoroughfares are no wider than this. But these street widths are supplemented in practically every case by

building lines, so that the buildings on the two opposite sides of the street are frequently twice or even thrice as far apart as the street is wide. This fact will, of course, enable the city to increase streets to an effective width without damaging buildings.

The importance of building lines to the city can hardly be over-estimated. They increase the light, air and ventilation about buildings; they make the maintenance of attractive lawns and plantings possible; they make for greater privacy; in every way they are a distinct contribution to the attractiveness of the city. Because of the almost universal establishment of building lines on all streets in Hartford, the zoning ordinance of the city makes no mention of front yards or setbacks.

SHORTCOMINGS IN POLICY RELATIVE TO BUILDING LINES

As cities in Connecticut are so far advanced in the establishment of building lines, it may seem hypercritical to point out defects in their practice. Yet, it is only by studying these shortcomings that we can look forward to their improvement in the future.

First of all, there has been no comprehensive plan to guide either city or property owner in laying out building lines. The result is that they vary not only on different streets, but in different blocks on the same street. It is not at all uncommon to find building lines 10 feet deep in one block and in the immediately adjoining block a building line 15 or 25 feet deep. In other words, there has been no uniformity in the depth of the building line for any particular street, or for any particular class of streets.

In some cases this lack of plan has been carried to such an extent that the depth of the building line varies within the block itself. This is particularly true in the case of corner lots. Although the corner lot usually observes the building line of the street upon which it fronts, it is not at all rare for it to ignore, either in whole or in part, the building line on the side street. Although the occasion for this is found in the burden imposed by a wide building line upon corner property, it is nevertheless, in effect, to the extent of its shallower depth, an abrogation of the building line on the side street. In built-up sections, where the building line is established after the subdivision and sale of the land, this is a difficulty that cannot well be avoided. A uniform application of the building line of the side street to a corner lot would in such instances frequently render the lot entirely incapable of improvement. This objection, however, does not prevail in the case of new subdivisions where the width of the corner lot may readily be increased to compensate for the area made unavailable for development by the establishment of the boundary line on the side street, thus enabling the corner lot to be economically developed without diminishing the size of the building. The objection, however, to this practice on the part of developers is that it so increases the price of corner lots as to make them less readily saleable.

As a rule, building lines in Connecticut cities have been laid down prior to development or in front of the existing buildings on a street. Occasionally a building erected prior to the establishment of the line is found athwart the line, but such instances are rare. In other words, building lines, instead of being applied to correct past mistakes in development, have been utilized almost wholly to preserve existing conditions. A building violating the common front yard observed within the block has not in the establishment of

the line been treated as a non-conforming building, as it should probably in most instances have been treated, but rather as the norm to which all future buildings should conform. In this respect building lines have occasionally fallen far short of their potential opportunity for service. In no case has a building line, to the writer's knowledge, been established in a Connecticut city, well back of the common house line on a built-up street, in order to effect a gradual widening of the street.

For years past city planners have bewailed the fact that in no state, with the possible exception of Pennsylvania —and even as to Pennsylvania there seems at present to be more than a fair amount of doubt—can streets legally be widened by forcing a gradual recession of building fronts. The fact that just as good, if not a better result can be obtained through the imposition of building lines located back of the present house lines has entirely escaped notice. Even at best the Pennsylvania method is exceedingly clumsy; its exercise involves an indefinite number of proceedings extending over a period of years; sometimes even generations. Not until the last remaining building is rebuilt are the widened street lines finally established, the final award for damages made and the total cost of the improvement reckoned.

The establishment of a building line constitutes, on the other hand, but a single proceeding, delay is reduced to a minimum, the officials initiating the improvement—and not their grandchildren—are apt to complete it; and the aggregate cost of the project, instead of being left high in the air is definitely assessed and paid for at once and for all.

Except for these considerations the actual realization of the completed line is practically the same under the two methods; in either case the buildings projecting beyond the line recede to the line as one by one they are rebuilt. The Pennsylvania method, which compels compliance with the line, although the actual taking is not effected until the recession of the building, is illegal in every state but one, and in that one, not of too robust legality. The establishment of building lines involving immediate taking but permitting encumbrances to project beyond the line until their reconstruction, but not more than a stipulated period of, say, 5, 10, 20 or 25 years, is according to the best legal minds, of undoubted constitutionality.

BUILDING LINES ON BUSINESS STREETS

The adoption of a comprehensive zoning ordinance has a direct bearing upon the future maintenance of building lines. Before we had zoning it was impossible to forecast the prospective development of the community—business might go anywhere. But with the establishment of residential, business and industrial districts, business must hereafter keep out of the residential zones. This means that business must locate in those sections set aside for commercial development.

Buildings devoted to residential purposes are unquestionably benefited by the establishment of building lines. But business buildings, to function properly, should be out on the street line. Stores and shops should be located as near to the pedestrians using the sidewalks as possible. To oblige such buildings to set back 50, 30 or 25 feet from the property line renders them that much less desirable for business purposes. Excessively wide forecourts, sometimes paved and sometimes not, detract not only from the appearance but from the usefulness of business property.

VACATION OF BUILDING LINES

As building lines are established under the power of eminent domain, it is obvious that the city has an easement in the area between the lines. No property owner may build beyond the line, unless the line is either modified or vacated.

In Connecticut cities there have been both modifications and vacations of these lines; indeed, isolated property owners are all the time besieging the council to lift building line restrictions. In some instances the council heeds the applications. In many instances building lines are, no doubt, vacated upon the very streets which are most in need of widening. If later on these streets are widened, the action taken by the council in vacating the line will redound to the disadvantage of the entire city, in that the municipality will have to pay increased building damages in widening the street.

In some cities reports are to the effect that the council is exceedingly reluctant to change building lines once they have been established; that nearly all applications for changes in lines fall by the way, and that it is exceedingly difficult to pursuade the council to grant any modification.

In other cities the council has been less strict. In certain of these communities, there is entirely too much disposition on the part of property owners as well as the council to view the vacation or modification of a building line as a private accommodation. The more important the thoroughfare, the more insistently has the council been urged to vacate the lines. This has been due mainly to the fact that property on the main streets is more in demand for business development than is the case on the minor streets. The result has often been a sacrifice of the very building lines that offered the greatest promise to the community for future widenings.

In many cases a much needed link in the thoroughfare plan can now be widened only through the demolition of buildings that have been erected within vacated building lines. In such cases, the city, if it is to condemn a building, will now have to pay a much greater amount in damages than if the building lines had been maintained. The maintenance of building lines is no less important than their establishment. For a long time, practice has made it apparent that cities should have some definite uniform policy relative to the treatment of petitions affecting the maintenance of building lines. Without a major thoroughfare plan it is, of course, almost impossible for a city to be sure whether granting the relief desired may not disastrously affect the traffic interests of the whole community.

BUILDING LINES ON MINOR STREETS

It may not be amiss to spend a moment in discussing the establishment of building lines upon those streets that are not and probably never will be included in the major thoroughfare plan—the minor streets of the community which are always likely to embrace from three-fourths to four-fifths of the street mileage of a city. In establishing building lines upon such streets or in accepting such streets in the future, or in passing upon minor streets in new land subdivisions, the council should insist that the building lines be established at least 30 feet back from the center line of the street. This would secure the erection of buildings on the two opposite sides of the street at least 60 feet apart. Had such a policy been followed in the past, it would be a comparatively simple matter today to secure necessary street space for present-day traffic require-

ments on the minor streets where the increasing density of development has imposed greater and greater burdens upon the street plan.

Forty and fifty-foot streets are seldom desirable even as minor streets. Such a narrow width makes very inadequate provision for necessary traffic circulation when with increasing density of population greater and greater burdens are thrown upon secondary streets. It may also be added that such a narrow width makes most inadequate provision for the additional light and air needed in the more central parts of cities, as a result of the increasing height of buildings. Wherever such a narrow width of street is utilized in subdivisions, there is a double reason for the establishment of reasonably adequate building lines. But the use of building lines should, of course, never condone the laying out of too narrow a street.

Every so often a city is petitioned to vacate the building lines on one of its narrow streets. In some cases, the vacation of these lines has, so far as the consequences were concerned, been little short of criminal. To safeguard against the worst abuses of such action it is suggested that the building lines on no minor street shall be diminished or vacated so as to make the distance between the lines on the two opposite sides of the street less than 60 feet.

TRADING BUILDING LINES FOR WIDE STREETS

With the adoption of a zoning ordinance and a major thoroughfare plan, the time seems to have come when a city is justified in reviewing its whole policy toward building lines. Having adopted zoning regulations and a plan for its major thoroughfares, it is for the first time in a position to consider the matter of modifying its building lines intelligently. It not only knows where its business development is to occur, it also knows the desirable width of its major thoroughfares. On those streets that are indicated upon the zoning map as business streets, it would therefore seem that the city might well adopt the policy of releasing from the building line restriction so much of the property as is back of the new proposed street line, in consideration of the property owner signing a waiver for damages on account of property now within the building line restriction and which it is desired to include within the widened street. In other words, wherever the distance between the building lines on the two opposite sides of the street in a business zone is greater than the proposed width of the street in the major thoroughfare plan, the city would vacate the excess depth of such building line when the property owner signed a formal release waiving damages for that portion of his property added to the width of the street.

Such a policy, although not followed in the past, would seem to be to the distinct advantage of both property owner and city. It would enable the owners of business property to build their business buildings on the line where they would be most useful for business purposes, that is, out to the line of the widened street, while at the same time it would give the city, without expense, the widened street.

In the past, strange to say, this does not seem to have been the practice in any city. Although these building lines have in every instance been established under the power of eminent domain and the owners have been assessed benefits and damages for their establishment, when the city has included either part or all of the area between building lines within a widened street, it has again gone through the formality of appraising and awarding

damages to property owners. From all accounts, however, the procedure has in instances been something more than a mere formality, since property owners have received substantial damages for the widenings. If this practice is to be continued, it is quite obvious that it will have a direct bearing upon the amount of street widening that a city can carry out, since it will inflict a heavy burden upon the taxpayer.

So long as there is a bare possibility of the council vacating a building line without expense to adjoining property owners, it is altogether natural to expect them to take the attitude of refusing to permit the city to appropriate any part of their courtyards for street purposes without compensation. But if the city establishes as its policy that in no case will it on any major thoroughfare modify a building line where additional width is needed unless the property owner waives all damages for that portion of the forecourt included within the widened street, is it not altogether likely that the owner, in order to get the immediate use of such land as lies between the present building line and the new street line, will agree to waive such claims as he might have for damages on account of property taken for the widened street?

There are three general sets of conditions affecting a city's policy in its consideration of future amendments of building lines upon streets designated as major thoroughfares:

1. Where the distance between the building lines on the two opposite sides of the street is greater than the width of the widened street as proposed in the major thoroughfare plan;
2. Where the distance between the building lines on the two opposite sides of the street is identical with the width of the widened street, as proposed in the major thoroughfare plan; and
3. Where the width of the widened street as proposed in the major thoroughfare plan is greater than the distance between the building lines on the two opposite sides of the street.

Where the building lines added to the street width give a width in excess of that proposed for a street in the major thoroughfare plan, the city can well afford to wait. There is no occasion for hurry since, no matter when the street widening might be carried out, there will, as long as the building line is maintained, be no additional building damage. Not so, however, with the property owner. If he desires to utilize his property, he will, of course, wish to build his structure with reference to the permanent street line. If he holds back in signing the necessary waiver for the land included within the widened street, instead of hurting the city, he merely hurts himself. It is thought that if this policy is followed, some cities will be able to obtain miles of wider streets without formidable costs being saddled upon the public treasury.

When the distance between the building lines on the two opposite sides of the street is identical with the width of the widened street, as proposed in the major thoroughfare plan, property owners may object to signing waivers of damage, since action would not increase the effective area of their land available for improvement. But since the city would not vacate the restriction, the property owners would, in effect, be standing in the way of their own greatest interest, as postponement in the establishment of the permanent street line would only retard development along the entire street. While they procrastinated, the values that might develop on their property would

redound to more far-sighted property owners on other streets who coöperated with the city in its street widening program.

Where the proposed width of the street is greater than the distance between building lines on two opposite sides of the street, the situation is somewhat different from the two preceding cases. In such instances there might or might not be buildings within the proposed lines, but in either event the city would desire the inclusion of land that is not now subject to building line restrictions within the widened street. Such taking of land would, in built-up areas, of course, in many instances disturb existing structures. In such cases the city should widen the street through the gradual recession of building fronts, obtained through the establishment of building lines.

If the building line easement taken were sufficiently broad in its scope to permit a city to convert a building line into a widened street line whenever, in the opinion of the council, such conversion were desirable, the expense and delay of a secondary condemnation proceeding would be spared the municipality. Not only the statutes of Connecticut but those of nearly every other state are in need of this amendment. So far as known, New York is the only city that enjoys this enviable legislative authority.

COÖRDINATING BUILDING LINES WITH THE ZONING ORDINANCE

Building lines should, in special cases, supplement the front yards required under the zoning ordinance. Naturally, there are limitations upon the depth of a front yard that may reasonably be required under zoning. A front yard 50 feet deep is probably as wide a front yard as the courts will normally sustain as reasonable under the police power. Yet, there are numerous instances in exclusive residence districts where a front yard of 100 feet is not only desirable, but indispensable, in order to protect the amenities of a street. Such protection, it seems, had better be extended to these localities, through the establishment of building lines. Then, too, there may be cases where the blanket front yards or setbacks required under the local zoning ordinance may, because of very exceptional circumstances in an occasional block, or on certain lots, work a distinct hardship upon property owners. To meet such conditions, the zoning ordinance may provide that if the council establishes, or, for that matter, has already established a building line upon a block, such block shall automatically be exempt from the front yard or setback provisions of the zoning ordinance. In ways like these, building lines can be made to complement and dovetail into the provisions of a zoning ordinance, so that a community may enjoy a maximum of protection with a minimum of inconvenience. The zoning ordinances of Waterbury, Bristol, Danbury, West Haven and Norwalk all contain provisions of this character.

Protection to the normal front yard today is more a problem of zoning than it is of building lines. Indeed, building lines, as a mere means of preventing encroachments on front yards in normal resident districts, may be considered obsolete; zoning operates far more efficiently in this respect than building lines. Although it is only twelve years since the first zoning ordinance in the United States to contain a general requirement as to front yards in residence zones was adopted—the Newark, New Jersey ordinance prepared by the writer—front yards and setback provisions are now common to almost all recent zoning ordinances. Such provisions are, indeed, so universal in zoning now that

there is a real danger that the proper sphere and importance of building lines will, to a large extent, be lost sight of. In almost any average, medium-sized city, it can safely be said that it is practically impossible so to formulate the front yard and setback provisions in the zoning ordinance as to obviate all need for building lines. However satisfactory the front yard and setback provisions of a zoning ordinance may be, as such, they will, when reviewed in the light of the needs of the major thoroughfare plan, almost always leave much to be desired. It is here especially that building lines may always be expected to possess an undisputed field of usefulness.

But even if the front yards and setback provisions established under a zoning ordinance were adequate to meet every demand of the major thoroughfare plan, they would, nevertheless, not take the place of building lines. Front yards and setbacks leave the property affected still under the control of the private owner; their establishment has not involved what constitutes, in a legal sense, a "taking," and without an actual "taking," the property cannot, of course, be included either immediately or at some future time within street lines.

In the case of *Town of Windsor* v. *Whitney*, 111 Atlantic 354, decided 1920, the Supreme Court of Connecticut held that the mere filing of a map of a proposed street or building line by the planning authority did not, in a technical sense, constitute a taking of property; such map is merely a means of regulating uses of property, so that when it is subdivided and built upon, the streets and building lines will conform to an approved city plan. Far-reaching as the court's opinion was in this case, let it be recalled that the statute, the constitutionality of which it sustained, did not impose upon owners the burden of laying out a particular street or building line; the option of opening a street or designating a building line was still left with them, but they could not lay out streets or building lines on their own land where they chose or of the width they chose—both must be where designated and of the width designated by the municipality.

The Windsor case came before the court before any zoning ordinance had been adopted in the state. It moreover affected streets and building lines laid out in a new subdivision; it did not concern itself with building lines laid down in developed sections as an intermediate means to an ultimate street widening; building lines in new developments and in old neighborhoods are very often two separate and distinct things. No court, either within or outside the state of Connecticut, assuming it has upheld building lines or front yards as a proper exercise of the police power, has ever defined with any exactness the extent of their application.

Town of Windsor v. *Whitney* is the only case, so far as known, in which the establishment of building lines has been upheld as a proper exercise of the police power, although the highest courts of nearly a dozen states have upheld the constitutionality of front yards and setbacks as parts of zoning ordinances.

No matter how far the courts may go in approving the establishment of front yards or building lines as a reasonable application of the police power, it is believed that there are limits to what they will uphold as reasonable. Front yards, which promote the amenities of a district, which affect the properties of different owners in substantially the same manner and which leave the use and enjoyment of the property so restricted still in the hands of the owners will probably be sustained by most progressive courts, under the police

power. But building lines designed, not to safeguard the amenities of particular properties but to enable the community to economize on future street widenings; building lines, which because of varying lot depths and a non-uniform orientation of lots affect different properties unequally, prohibiting in some instances the major portion of the lot and in other instances all of the lot from ever being built upon at all; building lines which have as their more or less immediate object the taking of part or all of a lot and placing it within a street—that such building lines will ever be sustained as a proper exercise of the police power is indeed unbelievable.

Here is a field which building lines established under the power of eminent domain may be expected to possess to the exclusion of those established under the police power.

CONCLUSIONS

Connecticut cities have, in general, probably had about as much, as long and as favorable experience with building lines as any in the entire country.

The lessons taught by this experience, extending over a period of three-quarters of a century, point to the following general conclusions:

1. The building line easement should be sufficiently broad in scope to permit at some later date, if needed, the inclusion of the land affected within the street lines themselves.
2. All building lines hereafter established should be established with reference to the requirements of the street widths laid down in the major thoroughfare plan.
3. No existing building line should hereafter be modified or vacated until after the municipality has formulated a major thoroughfare plan and then only in conformity with the requirements of such thoroughfare plan.
4. Buildings projecting beyond a proposed building line might, to reduce the cost of the establishment of the building line, be allowed to remain unmolested for a reasonable term of years up to a fixed limit, after which they should be required to observe the line.
5. Building lines as an intermediate means of ultimately obtaining wider streets should be limited in their application principally to streets already laid out; in new subdivisions, streets should generally be accorded their ultimate widths when the land is originally platted.
6. Only in exceptional instances should the protection of front yards as such be attempted through building lines; wherever at all practicable, the amenities of a residence district should be safeguarded through zoning.
7. Building lines and zoning regulations should complement and dovetail into one another to avoid unnecessary conflict.
8. Building lines should generally be financed through benefits assessed upon abutting property.
9. The initiative in establishing building lines should be taken by the planning commission, which, instead of waiting for petitions from property owners, should take the aggressive in having adequate lines laid down on all streets incorporated in the major thoroughfare plan.

Although it is many years since building lines were first established in the United States, we still know very little about them. Their use has generally been slipshod and haphazard.